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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bill was introduced in Lok Sabha on the 8th April, 1974:—

BILL No. 27 OF 1974

A Bill further to amend the Code of Civil Procedure, 1908, and the Limitation Act, 1963

BE it enacted by Parliament in the Twenty-fifth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement

1. (*1*) This Act may be called the Code of Civil Procedure (Amendment) Act, 1974.

(*2*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act, and any reference in any provision to the commencement of this Act or to the commencement of the Code of Civil Procedure (Amendment) Act, 1974, shall be construed as a reference to the coming into force of that provision.

CHAPTER II

AMENDMENT OF THE SECTIONS

Amendment of section 1.

5 of 1908.

2. In the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), in section 1, for sub-section (*3*), the following sub-section shall be substituted, namely:—

'(*3*) It extends to the whole of India except—

(*a*) the State of Jammu and Kashmir;

(*b*) save as hereinafter provided, the scheduled areas comprising the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh:

Provided that sections 36 to 43 (both inclusive) and Order XXXIV in the First Schedule shall extend also to the East Godavari, West Godavari and Visakhapatnam Agencies in the State of Andhra Pradesh;

(c) the State of Nagaland and the tribal areas:

Provided that the State Government concerned may, by notification in the Official Gazette, extend the provisions of this Code or any of them to the whole or part of the State of Nagaland or such tribal areas, as the case may be, with such supplemental, incidental or consequential modifications as may be specified in the notification.

Explanation.—In this clause, "tribal areas" means the territories which, immediately before the 21st day of January, 1972, were included in the tribal areas of Assam as referred to in paragraph 20 of the Sixth Schedule to the Constitution other than those within the local limits of the Municipality of Shillong;

(*d*) that in relation to the Union territory of Lakshadweep, the application of the Code shall be without prejudice to the application of the Regulations, for the time being in force in such territory relating to the application of this Code.'.

Amendment of section 2.

3. In section 2 of the principal Act,—

(*i*) in clause (2),—

(*a*) the words "and may be either preliminary or final" shall be omitted;

(*b*) the *Explanation* shall be omitted;

(*ii*) in clause (17), in sub-clause (*b*), for the words "the Indian Civil Service", the words "an All-India Service" shall be substituted.

Amendment of section 8.

4. In section 8 of the principal Act, for the figures and words "77 and 155 to 158", the figures and word "77, 157 and 158" shall be substituted.

Amendment of section 9.

5. In section 9 of the principal Act, the *Explanation* shall be re-numbered as *Explanation I*, and after *Explanation I* as so re-numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation II.*—For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in *Explanation I* or whether or not such office is attached to a particular place.".

Insertion of new section 11A. *Res judicata* to apply to execution proceedings and to other civil proceedings.

6. After section 11 of the principal Act, the following section shall be inserted, namely:—

"11A. The provisions of section 11 shall, so far as may be, also apply to—

(*a*) every proceeding in execution, and

(*b*) every civil proceeding other than a suit.".

Amendment of section 20.

7. In section 20 of the principal Act, for *Explanations I* and *II*, the following *Explanations* shall be substituted, namely:—

"*Explanation I.*—A corporation shall be deemed to carry on business at its sole or principal office in India.

Explanation II.—In a suit for recovery of money, based on contract, the cause of action shall, in the absence of any term in the contract to the contrary, be deemed to arise in part at the place where the person, to whom the money is due under the contract, actually and voluntarily resides, or carries on business, or personally works for gain.".

Amendment of section 21.

8. Section 21 of the principal Act shall be re-numbered as sub-section (*1*) of that section, and, after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(*2*) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(*3*) No objection as to the competence of the executing Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executing Court at the earliest possible opportunity, and unless there has been a consequent failure of justice.".

Insertion of new section 21A.

9. After section 21 of the principal Act, the following section shall be inserted, namely:—

Bar on suit to set aside decree on objection as to place of suing.

'21A. No party to a suit shall be allowed to question the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing.

Explanation.—The expression "former suit" means a suit which has been decided prior to the decision in the suit in which the validity of the decree is questioned, whether or not the previously decided suit was instituted prior to the suit in which the validity of such decree is questioned.'.

Amendment of section 24.

10. In section 24 of the principal Act,—

(*i*) in sub-section (*2*), for the words "thereafter tries such suit", the words "is thereafter to try or dispose of such suit or proceeding" shall be substituted;

(*ii*) for sub-section (*3*), the following sub-section shall be substituted, namely:—

'(*3*) For the purposes of this section and section 24A,—

(*a*) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(*b*) "proceeding" includes a proceeding for the execution of a decree or order.';

(*iii*) after sub-section (*4*), the following sub-section shall be inserted, namely:—

"(*5*) A suit or proceeding may be transferred under this section or under section 24A from a Court which has no jurisdiction to try it.".

Insertion of new section 24A.

11. After section 24 of the principal Act, the following section shall be inserted, namely:—

Power of District Court to transfer suits where the trial Court is incompetent to try any issue.

"24A. (*1*) Where any Court subordinate to the District Court is satisfied that a suit pending before it, which it has jurisdiction to try, involves a question of such a nature that if a suit had been brought for relief based principally on that question, the Court would have been incompetent to try the suit and that the determination of such question is necessary for the proper disposal of the suit, the Court shall stay further proceedings in the suit and submit it to the District Court with a brief report explaining the nature of the suit and the question which requires determination for the proper disposal of such suit.

(*2*) Where a suit is submitted to it under sub-section (*1*), the District Court shall, after notice to the parties and after hearing such of them as desire to be heard,—

(*a*) transfer the suit for trial to any Court subordinate to it and competent to try the suit, or

(*b*) withdraw the suit to itself and try it.

(*3*) Where the District Court withdraws any suit to itself for trial, it shall either re-try it or proceed from the point at which it was withdrawn to it for trial.

(*4*) Where a suit is transferred to any Court, such Court shall, subject to any special direction made by the District Court in the order of transfer, either re-try the suit or proceed from the stage at which the suit was transferred to it.

(*5*) Where a District Court makes an order of transfer under sub-section (*2*), it shall cause a copy of such order of transfer to be sent to the Court by which the suit was submitted to it.".

Substitution of new section for section 25.

12. For section 25 of the principal Act, the following section shall be substituted, namely:—

Power of Supreme Court to transfer suits, etc.

"25. (*1*) On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

(*2*) Every application under this section shall be made by motion which shall be supported by affidavit.

(*3*) The Court to which such suit, appeal or other proceeding is transferred shall, subject to any special directions in the order

of transfer, either re-try it or proceed from the stage at which it was transferred to it.

(4) In dismissing any application under this section, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum, not exceeding two thousand rupees, as it considers appropriate in the circumstances of the case.

(5) The law applicable to any suit, appeal or other proceeding transferred under this section shall be the law which the Court in which the suit, appeal or other proceeding was originally instituted ought to have applied to such suit, appeal or proceeding.".

Amendment of section 28.

13. In section 28 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) Where the language of the summons is different from the language of the record referred to in sub-section (2), a translation of the record,—

(a) in Hindi, where the language of the Court issuing the summons is Hindi, or

(b) in English, where the language of such record is other than English or Hindi,

shall also be sent together with the record sent under that sub-section.".

Amendment of section 34.

14. To sub-section (1) of section 34 of the principal Act, the following proviso and *Explanation* shall be added, namely:—

'Provided that where the principal sum adjudged exceeds rupees ten thousand and the liability in relation to the sum so adjudged had arisen out of a commercial transaction, the rate of such further interest may exceed six per cent. per annum, but shall not exceed the contractual rate of interest or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.

Explanation.—In this sub-section "nationalised bank" means a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.'.

5 of 1970.

Amendment of section 35A.

15. In section 35A of the principal Act,—

(i) in sub-section (1), for the words "excluding an appeal", the words "excluding an appeal or a revision" shall be substituted;

(ii) in sub-section (2), for the words "one thousand rupees", the words "two thousand rupees" shall be substituted.

Insertion of new section 35B.

16. After section 35A of the principal Act, the following section shall be inserted, namely:—

Costs for causing delay.

"35B. While making an order for costs in a suit or proceeding, the Court may, for reasons to be recorded, require the party to the suit or proceeding who is responsible for delaying, without any reasonable excuse, any step in such suit or proceeding, to pay such

costs, commensurate with the delay so caused, as it thinks fit, and the costs so required to be paid shall not be included in the costs awarded in the decree or order which is ultimately made in the suit or proceeding.".

Substitution of new section for section 36.

17. For section 36 of the principal Act, the following section shall be substituted, namely:—

Application to orders.

"36. The provisions of this Code relating to the execution of decrees (including provisions relating to payment under a decree) shall, so far as they are applicable, be deemed to apply to the execution of orders (including payment under an order).".

Amendment of section 37.

18. In section 37 of the principal Act, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.".

Amendment of section 39.

19. In section 39 of the principal Act,—

(*i*) in sub-section (*1*), after the words "to another Court", the words "of competent jurisdiction" shall be inserted;

(*ii*) after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.".

Amendment of section 42.

20. Section 42 of the principal Act shall be re-numbered as sub-section (*1*) of that section, and, after sub-section (*1*) as so re-numbered, the following sub-sections shall be inserted, namely:—

"(2) Without prejudice to the generality of the provisions of sub-section (*1*), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely:—

(*a*) power to send the decree for execution to another Court under section 39;

(*b*) power to execute the decree against the legal representative of the deceased judgment-debtor under section 50;

(*c*) power to order attachment of a decree.

(3) A Court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.

(4) Nothing in this section shall be deemed to confer on the

Court to which a decree is sent for execution any of the following powers, namely:—

(*a*) power to order execution at the instance of the transferee of a decree;

(*b*) in the case of a decree passed against a firm, power to grant the leave to execute such decree against any person other than such a person as is referred to in clause (*b*) or clause (*c*) of sub-rule (*1*) of rule 50 of Order XXI.".

Amendment of section 47.

21. In section 47 of the principal Act, for the *Explanation*, the following *Explanations* shall be substituted, namely:—

"*Explanation I.*—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II.—(*a*) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(*b*) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.".

Amendment of section 51.

22. In the proviso to section 51 of the principal Act,—

(*i*) in sub-clause (*i*) of clause (*a*), for the words "or leave", the words "or is, without lawful excuse, likely to leave" shall be substituted;

(*ii*) in clause (*b*), for the words "or has refused", the words "or has, without lawful excuse, refused" shall be substituted.

Amendment of section 58.

23. In section 58 of the principal Act,—

(*i*) in sub-section (*1*),—

(*a*) in clause (*a*), for the words "fifty rupees, for a period of six months, and,", the words "one thousand rupees, for a period not exceeding six months, and," shall be substituted;

(*b*) for clause (*b*), the following clause shall be substituted, namely:—

"(*b*) where the decree is for the payment of a sum of money exceeding two hundred rupees, but not exceeding one thousand rupees, for a period not exceeding six weeks:";

(*c*) in the first proviso, for the words "said period of six months or six weeks, as the case may be,", the words "said period of detention" shall be substituted;

(*ii*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) For the removal of doubts, it is hereby declared that no order for detention in civil prison shall be made, where the total amount of the decree does not exceed two hundred rupees.".

Amendment of section 60.

24. In section 60 of the principal Act,—

(*i*) in the proviso to sub-section (*1*),—

(*a*) in clause (c), for the words "an agriculturist", the words "an agriculturist or a labourer or a domestic servant" shall be substituted;

(*b*) in clause (*g*), after the words "pensioners of the Government", the words "or of a local authority or of any other employer" shall be inserted;

(*c*) in clause (*i*),—

(*i*) for the words "two hundred rupees and one-half the remainder", the words "two hundred and fifty rupees and two-thirds of the remainder" shall be substituted;

(*ii*) for the proviso, the following proviso shall be substituted, namely:—

"Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall be finally exempt from attachment in execution of that decree.";

(*d*) for clause (*j*), the following clause shall be substituted, namely:—

"(*j*) the pay and allowances of persons to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, applies;"; 45 of 1950. 46 of 1950. 82 of 1957.

(*e*) after clause (*k*), the following clauses shall be inserted, namely:—

"(*ka*) all moneys payable under a policy of insurance on the life of the judgment-debtor;

(*kb*) the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;";

(f) for *Explanation 1*, the following *Explanation* shall be substituted, namely:—

"*Explanation I.*—The particulars mentioned in clauses (*g*), (*h*), (*i*), (*ia*), (*j*), (*l*) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment, whether before or after it is actually payable.";

(*g*) in *Explanation 2*, for the words, figure, brackets and letters "*Explanation 2.*—In clauses (*h*) and (*i*)", the words, figures, brackets and letters. "*Explanation II.*—In clauses (*i*) and (*ia*)," shall be substituted;

(*h*) in *Explanation 3*, for the figure "3", the figures "*III*" shall be substituted;

(*i*) after *Explanation III* as so amended, the following *Explanations* shall be inserted, namely:—

'*Explanation IV.*—For the purposes of this proviso, "wages" includes bonus, and "labourer" includes a skilled or semi-skilled labourer.

Explanation V.—For the purposes of this proviso, the expression "agriculturist" shall include every person who depends for his livelihood mainly on income from agricultural land, whether as owner, tenant, partner or agricultural labourer.';

(*ii*) after sub-section (*1*), the following sub-section shall be inserted, namely:—

"(*1A*) Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.".

Amendment of section 63.

25. In section 63 of the principal Act, after sub-section (*2*), the following *Explanation* shall be inserted, namely:—

'*Explanation.*—For the purposes of sub-section (*2*), "proceeding taken by a Court" does not include an order allowing, to a decree-holder who has purchased property at a sale held in execution of a decree, set off to the extent of the purchase price payable by him.'.

Amendment of section 66.

26. In section 66 of the principal Act, in sub-section (*1*), the following shall be inserted at the end, namely:—

"and in any suit by a person claiming title under a purchase so certified, the defendant shall not be allowed to plead that the purchase was made on his behalf or on behalf of someone through whom the defendant claims.".

Amendment of section 75.

27. In section 75 of the principal Act, after clause (*d*), the following clauses shall be inserted, namely:—

"(*e*) to hold a scientific investigation;

(*f*) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;

(*g*) to perform any ministerial act;".

Omission of section 80.

28. Section 80 of the principal Act shall be omitted.

Amendment of section 82.

29. In section 82 of the principal Act,—

(*i*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) Where, in a suit by or against the Government or by or against a public officer in respect of any act purporting to be done by him in his official capacity, a decree is passed against the Union of India or a State or, as the case may be,

the public officer, such decree shall not be executed except in accordance with the provisions of sub-section (2).";

(*ii*) in sub-section (2), for the words "such report", the words "such decree or such extended period as may be fixed by the Court in any particular case" shall be substituted;

(*iii*) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(4) The Court may, in its discretion and from time to time, extend the period specified in sub-section (2) or fixed by the Court under that sub-section, even though the period so specified or fixed may have expired.

(5) Where a Court passes any such decree as is referred to in sub-section (1), it shall, as soon as practicable after the date of the decree, send an intimation to the Government pleader, by whatever name called, of the passing of the decree, but failure to give such intimation shall not affect the execution of the decree.".

Amendment of section 86

30. In section 86 of the principal Act,—

(*i*) in sub-section (1),—

(*a*) the words "Ruler of a" shall be omitted;

(*b*) in the proviso, for the words "a Ruler", the words "a foreign State" shall be substituted;

(*ii*) in sub-section (2),—

(*a*) for the words "the Ruler", wherever they occur, the words "the foreign State" shall be substituted;

(*b*) in clause (*a*), for the word "him", the word "it" shall be substituted;

(*c*) in clause (*b*), for the word "himself", the word "itself" shall be substituted;

(*d*) in clause (*d*), for the word "him", the word "it" shall be substituted;

(*iii*) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) Except with the consent of the Central Government, certified in writing by a Secretary to that Government, no decree shall be executed against the property of any foreign State.";

(*iv*) in sub-section (4),—

(*a*) clause (*a*) shall be re-lettered as clause (*aa*), and before clause (*aa*) as so re-lettered, the following clause shall be inserted, namely:—

"(*a*) any Ruler of a foreign State;";

(*b*) in clause (*c*), for the words "or retinue of the Ruler, Ambassador,", the words "of the foreign State or the staff or retinue of the Ambassador" shall be substituted;

(*c*) for the words "as they apply in relation to the Ruler of a foreign State", the words "as they apply in relation to a foreign State" shall be substituted;

(*v*) after sub-section (*4*), the following sub-sections shall be inserted, namely:—

"(*5*) The following persons shall not be arrested under this Code, namely:—

(*a*) any Ruler of a foreign State;

(*b*) any Ambassador or Envoy of a foreign State;

(*c*) any High Commissioner of a Commonwealth country;

(*d*) any such member of the staff of the foreign State or the staff or retinue of the Ruler, Ambassador or Envoy of a foreign State or of the High Commissioner of a Commonwealth country, as the Central Government may, by general or special order, specify in this behalf.

(*6*) Where a request is made to the Central Government for the grant of any consent referred to in sub-section (*1*), the Central Government shall, before refusing to accede to the request in whole or in part, give to the person making the request a reasonable opportunity of being heard.".

Amendment of section 91.

31. In section 91 of the principal Act,—

(*i*) for the heading, the following heading shall be substituted, namely:—

"PUBLIC NUISANCES AND OTHER WRONGFUL ACTS AFFECTING THE PUBLIC";

(*ii*) for sub-section (*1*), the following sub-section shall be substituted, namely:—

"(*1*) In the case of a public nuisance or other wrongful act affecting the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted,—

(*a*) by the Advocate-General, or

(*b*) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.".

Amendment of section 92.

32. In section 92 of the principal Act,—

(*i*) in sub-section (*1*), for the words "consent in writing of the Advocate-General,", the words "leave of the Court," shall be substituted;

(*ii*) after sub-section (*2*), the following sub-section shall be inserted, namely:—

"(*3*) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied *cy pres* in one or more of the following circumstances, namely:—

(*a*) where the original purposes of the trust, in whole or in part,—

(*i*) have been, as far as may be, fulfilled; or

(*ii*) cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or

(*b*) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or

(*c*) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit, of the trust and its applicability to common purposes; or

(*d*) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or

(*e*) where the original purposes, in whole or in part, have, since they were laid down,—

(*i*) been adequately provided for by other means, or

(*ii*) ceased, as being useless or harmful to the community, or

(*iii*) ceased to be, in law, charitable, or

(*iv*) ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.".

Amendment of section 95.

33. In section 95 of the principal Act, in sub-section (*1*), for the words "expense or injury caused to him", the words and brackets "expense or injury (including injury to reputation) caused to him" shall be substituted.

Amendment of section 96.

34. In section 96 of the principal Act,—

(*i*) in sub-section (*1*), the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—A party aggrieved by a finding of a Court incorporated in a decree may appeal from the decree in so far as it relates to that finding, notwithstanding that by reason of the finding of the Court on any other issue which is sufficient for decision of the suit, the decree, wholly or in part, is in favour of that party.";

(*ii*) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognisable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees.".

Amendment of section 97.

35. In section 97 of the principal Act, for the words "passed after the commencement of this Code", the words "passed before the commencement of the Code of Civil Procedure (Amendment) Act, 1974" shall be substituted.

Amendment of section 98.

36. In section 98 of the principal Act, in sub-section (2), in the proviso, for the words "composed of two Judges belonging to a Court consisting of more than two Judges", the words "composed of two or other even number of Judges belonging to a Court consisting of more Judges than those constituting the Bench" shall be substituted.

Amendment of section 99.

37. In section 99 of the principal Act,—

(*i*) after the words "any misjoinder", the words "or non-joinder" shall be inserted;

(*ii*) the following proviso shall be added at the end, namely:—

"Provided that nothing in this section shall apply to non-joinder of a necessary party.".

Insertion of new section 99A.

38. After section 99 of the principal Act, the following section shall be inserted, namely:—

No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected.

"99A. Without prejudice to the generality of the provisions of section 99, no order under section 47 shall be reversed or substantially varied, nor shall any case relating to such order be remanded in appeal on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case.".

Substitution of new section for section 100.

39. For section 100 of the principal Act, the following section shall be inserted, namely:—

Second appeal.

"100. (*1*) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court certifies that the case involves a substantial question of law.

(*2*) An appeal may lie under this section from an appellate decree passed *ex parte*.

(*3*) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law on which the certificate of the High Court is sought.

(*4*) Where the High Court certifies that a substantial question of law is involved in any case, it shall, at the time of granting the certificate,—

(*a*) formulate that question; and

(*b*) state its reasons for so certifying.

(*5*) The appeal shall be heard only on the question so certified, and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.".

Insertion of new section 100A.

40. After section 100 of the principal Act, the following section shall be inserted, namely:—

No further appeal in certain cases.

"100A. Notwithstanding anything contained in any Letters Patent for any High Court or in any other instrument having the force of law or in any other law for the time being in force, where any appeal from an appellate decree or order is heard and decided by a single Judge of a High Court, no further appeal shall lie from the judgment, decision or order of such single Judge in such appeal or from any decree passed in such appeal.".

Amendment of section 102.

41. In section 102 of the principal Act, for the words "one thousand rupees", the words "three thousand rupees" shall be substituted.

Substitution of new section for section 103.

42. For section 103 of the principal Act, the following section shall be substituted, namely:—

Power of High Court to determine issue of fact.

"103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal,—

(*a*) which has not been determined by the lower Appellate Court or both by the Court of first instance and the lower Appellate Court, or

(*b*) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred to in section 100.".

Amendment of section 104.

43. In section 104 of the principal Act, in sub-section (*1*), after clause (*ff*), the following clause shall be inserted, namely:—

"(*fff*) an order under section 91 or section 92 refusing leave to institute a suit of the nature referred to in section 91 or section 92, as the case may be;".

Amendment of section 105.

44. In section 105 of the principal Act, in sub-section (*2*), the words "made after the commencement of this Code" shall be omitted.

Omission of section 115.

45. Section 115 of the principal Act shall be omitted.

Amendment of section 123.

46. In section 123 of the principal Act,—

(*i*) in sub-sections (*3*), (*4*) and (*5*), for the words "Chief Justice or Chief Judge", wherever they occur, the words "High Court" shall, subject to such grammatical variations as may be necessary, be substituted;

(*ii*) in sub-section (*3*), the proviso shall be omitted.

Omission of section 132.

47. Section 132 of the principal Act shall be omitted.

Amendment of section 135A.

48. In section 135A of the principal Act, in sub-section (*1*), for the word "fourteen", the word "forty" shall be substituted.

Amendment of section 139.

49. In section 139 of the principal Act, after clause (*a*), the following clause shall be inserted, namely:—

53 of 1952.

"(*aa*) any notary appointed under the Notaries Act, 1952; or".

Amendment of section 141.

50. In section 141 of the principal Act, the following *Explanation* shall be inserted, namely:—

'*Explanation.*—In this section, the expression "proceedings" includes proceedings under Order IX, but does not include any proceeding under article 226 of the Constitution.'.

Amendment of section 144.

51. In section 144 of the principal Act,—

(*i*) in sub-section (*1*),—

(*a*) for the words "varied or reversed, the Court of first instance", the words "varied or reversed in any appeal, revision or other proceeding or is set aside or modified in any suit instituted for the purpose, the Court which passed the decree or order" shall be substituted;

(*b*) for the words "such part thereof as has been varied or reversed", the words "such part thereof as has been varied, reversed, set aside or modified" shall be substituted;

(*c*) for the words "consequential on such variation or reversal", the words "consequential on such variation, reversal, setting aside or modification of the decree or order" shall be substituted;

(*ii*) in sub-section (*1*), the following *Explanation* shall be inserted, namely:—

'*Explanation.*—For the purposes of sub-section (*1*), the expression "Court which passed the decree or order" shall be deemed to include,—

(*a*) where the decree or order has been varied or reversed in exercise of appellate or revisional jurisdiction, the Court of first instance;

(*b*) where the decree or order has been set aside by a separate suit, the Court of first instance which passed such decree or order;

(*c*) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree or order was passed were instituted at the time of making the application for restitution under this section, would have jurisdiction to try such suit.'.

Amendment of section 145.

52. In section 145 of the principal Act,—

(*i*) for the words "has become liable as surety", the words "has furnished security" shall be substituted;

(*ii*) for the portion beginning with the words "the decree or order may be executed against him", and ending with the words and figures "within the meaning of section 47:", the following shall be substituted, namely:—

"the decree or order may be executed in the manner herein provided for the execution of decrees, namely:—

(*i*) if he has rendered himself personally liable, against him to that extent;

(*ii*) if he has furnished any property as security, by sale of such property to the extent of the security;

(*iii*) if the case falls both under clauses (*i*) and (*ii*), then to the extent specified in those clauses,

and such person shall, for the purposes of appeal, be deemed to be a party within the meaning of section 47:".

Insertion of new section 148A.

53. After section 148 of the principal Act, the following section shall be inserted, namely:—

Right to lodge a caveat.

"148A. (*1*) Where an application is expected to be made, or has been made, in a suit or proceeding instituted, or about to be instituted, in a Court, any person claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

(*2*) Where a caveat has been lodged under sub-section (*1*), the person by whom the caveat has been lodged (hereinafter referred to as the caveator) shall serve a notice of the caveat by registered post acknowledgment due on the person by which the application has been, or is expected to be, made, under sub-section (*1*).

(*3*) Where, after a caveat has been lodged under sub-section (*1*), any application is filed in any suit or proceeding, the Court shall serve a notice of the application on the caveator.

(*4*) Where a notice of any caveat has been served on the applicant, he shall forthwith furnish the caveator, at the caveator's expense, with a copy of the application made by him and also with copies of any paper or document which has been, or may be, filed by him in support of the application.".

Insertion of new sections 153A and 153B.

54. After section 153 of the principal Act, the following sections shall be inserted, namely:—

Power to amend decree or order where appeal is summarily dismissed.

"153A. Where an Appellate Court dismisses an appeal under rule 11 of Order XLI, the power of the Court to amend, under section 152, the decree or order appealed against may be exercised by the Court which had passed the decree or order in the first instance, notwithstanding that the dismissal of the appeal has the effect of confirming the decree or order, as the case may be, passed by the Court of first instance.

Place of trial to be deemed to be open Court.

153B. The place in which any Civil Court is held for the purpose of trying any suit shall be deemed to be an open Court, to which the public generally may have access so far as the same can conveniently contain them:

Provided that the presiding Judge may, if he thinks fit, order at any stage of any inquiry into or trial of any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.".

CHAPTER III

AMENDMENT OF THE ORDERS

Amendment of Order I.

55. In the First Schedule to the principal Act (hereinafter referred to as the First Schedule), in Order I,—

(*i*) for rule 1, the following rule shall be substituted, namely:—

Who may be joined as plaintiffs.

"1. All persons may be joined in one suit as plaintiffs where—

(*a*) any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and

(*b*) if such persons brought separate suits, any common question of law or fact would arise.";

(*ii*) for rule 3, the following rule shall be substituted, namely:—

Who may be joined as defendants.

"3. All persons may be joined in one suit as defendants where—

(*a*) any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and

(*b*) if separate suits were brought against such persons, any common question of law or fact would arise.";

(*iii*) after rule 3, the following rule shall be inserted, namely:—

Power to order separate trials where joinder of defendants may embarrass or delay trial.

"3A. Where it appears to the Court that any joinder of defendants may embarrass or delay the trial of the suit, the Court may order separate trials or make such other order as may be expedient.";

(*iv*) for rule 8, the following rule shall be substituted, namely:—

One person may sue or defend on behalf of all in same interest.

"8. (*1*) Where there are numerous persons having the same interest in one suit,—

(*a*) one or more of such persons may, with the permission of the Court, sue or be sued, or may defend such suit, on behalf of or for the benefit of all persons so interested;

(*b*) the Court may direct that one or more of such persons may sue or be sued, or may defend such suit, on behalf of or for the benefit of all persons so interested.

(2) The Court shall, in every case where a permission or direction is given under sub-rule (*1*), at the plaintiff's expense,

give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(3) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit.

(4) No part of the claim in any such suit shall be abandoned under sub-rule (1), and no such suit shall be withdrawn under sub-rule (3), of rule 1 of Order XXIII, and no agreement, compromise or satisfaction shall be recorded in any such suit under rule 3 of that Order, unless the Court has given, at the plaintiff's expense, notice to all persons so interested in the manner specified in sub-rule (2).

(5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit.

(6) A decree passed in a suit under this rule shall be binding on all persons on whose behalf or for whose benefit the suit is instituted, or defended, as the case may be.

Explanation.—For the purpose of determining whether the persons who sue or are sued or defend have the same interest in one suit, it is not necessary to establish that such persons have the same cause of action as the persons on whose behalf or for whose benefit they sue or are sued or defend a suit, as the case may be.":

(*v*) after rule 8, the following rule shall be inserted, namely:—

Power of Court to permit a person or body of persons to present opinion or to take part in the proceedings.

"8A. While trying a suit, the Court may, if satisfied that a person or body of persons is interested in any question of law which is directly and substantially in issue in the suit and that it is necessary in the public interest to allow that person or body of persons to present his or its opinion on that question of law, permit that person or body of persons to present such opinion and to take such part in the proceedings of the suit as the Court may specify.";

(*vi*) to rule 9, the following proviso shall be added, namely:—

"Provided that nothing in this rule shall apply to non-joinder of a necessary party.";

(*vii*) after rule 10, the following rule shall be inserted, namely:—

"10A. The Court may, in its discretion, request any pleader to address it as to any interest which is likely to be affected by its decision on any matter in issue if the party having the interest which is likely to be so affected is not represented by any pleader."; Power of Court to request any pleader to address it.

(*viii*) in rule 11, for the words "the suit" the words "a suit" shall be substituted.

56. In the First Schedule, in Order II, for rule 6, the following rule shall be substituted, namely:— Amendment of Order II.

"6. Where it appears to the Court that the joinder of causes of action in one suit may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient in the interests of justice.". Power of Court to order separate trials.

57. In the First Schedule, in Order III,— Amendment of Order III.

(*i*) in rule 4,—

(*a*) in sub-rule (2),—

(*i*) for the words "filed in Court and shall be", the words "filed in Court and shall, for the purposes of sub-rule (*1*), be" shall be substituted;

(*ii*) the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—For the purposes of this sub-rule, the following shall be deemed to be proceedings in the suit,—

(*a*) an application for review of judgment,

(*b*) an application under section 144 or under section 152 of this Code,

(*c*) an appeal from any decree or order in the suit, and

(*d*) any application or act for the purpose of obtaining copies of documents or return of documents produced or filed in the suit or of obtaining refund of moneys paid into the Court in connection with the suit.";

(*b*) for sub-rule (*3*), the following sub-rule shall be substituted, namely:—

"(*3*) Nothing in sub-rule (*2*) shall be construed—

(*a*) as extending, as between the pleader and his client, the duration for which the pleader is engaged, or

(*b*) as authorising service on the pleader of any notice or document issued by any Court other than the Court for which the pleader was engaged, except where such service was expressly agreed to by the client in the document referred to in sub-rule (*1*).";

(*ii*) in rule 5, for the words "Any process served on the pleader of any party", the words "Any process served on the pleader who has been duly appointed to act in Court for any party" shall be substituted;

(*iii*) in rule 6, after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

"(*3*) The Court may, at any stage of the suit, order any party to the suit not having a recognised agent residing within the jurisdiction of the Court, or a pleader who has been duly appointed to act in the Court on his behalf, to appoint, within a specified time, an agent residing within the jurisdiction of the Court to accept service of the process on his behalf.".

Amendment of Order V.

58. In the First Schedule, in Order V,—

(*i*) in rule 1, in sub-rule (*1*), after the proviso, the following further proviso shall be inserted, namely:—

"Provided further that in appropriate cases, the Court may direct the defendant to file the written statement of his defence, if any, on the date of his appearance and cause an entry to be made to that effect in the summons.";

(*ii*) for rule 15, the following rule shall be substituted, namely:—

Where service may be on an adult member of defendant's family.

"15. Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.";

(*iii*) in rule 17, for the words "or where the serving officer, after using all due and reasonable diligence, cannot find the defen-

dant", the words "or where the defendant is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time" shall be substituted;

(*iv*) after rule 19, the following rule shall be inserted, namely:—

"19A. (*1*) The Court shall, in addition to, and simultaneously with, the issue of summons for service in the manner provided in rules 9 to 19 (both inclusive), also direct the summons to be served by registered post addressed to the defendant or his agent empowered to accept the service at the place where the defendant or his agent actually and voluntarily resides or carries on business or personally works for gain:

Simultaneous issue of summons for service by post in addition to personal service.

Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court considers it unnecessary.

(*2*) When an acknowledgment purporting to be signed by the defendant or his agent is received by the Court or the summons is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had refused to take delivery of the summons, the Court issuing the summons may declare that there has been a valid service.";

(*v*) in rule 20, after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) Where the Court acting under sub-rule (*1*) orders service by an advertisement in a newspaper, the newspaper shall be a daily newspaper circulating in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain.";

(*vi*) rule 20A shall be omitted;

(*vii*) for rule 26, the following rules shall be substituted, namely:—

"26. Where—

Service in foreign territory through Political Agent or Court.

(*a*) in the exercise of any foreign jurisdiction vested in the Central Government, a Political Agent has been appointed, or a Court has been established or continued, with power to serve a summons, issued by a Court under this Code, in any foreign territory in which the defendant actually and voluntarily resides, carries on business or personally works for gain, or

(*b*) the Central Government has, by notification in the Official Gazette, declared, in respect of any Court situate in any such territory and not established or continued in the exercise of any such jurisdiction as aforesaid, that service

by such Court of any summons issued by a Court under this Code shall be deemed to be valid service,

the summons may be sent to such Political Agent or Court, by post, or otherwise, or if so directed by the Central Government, through the Ministry of that Government dealing with foreign affairs, or in such other manner as may be specified by the Central Government for the purpose of being served upon the defendant; and, if the Political Agent or Court returns the summons with an endorsement purporting to have been made by such Political Agent or by the Judge or other officer of the Court to the effect that the summons has been served on the defendant in the manner hereinbefore directed, such endorsement shall be deemed to be evidence of service.

Summonses to be sent to officers of foreign countries.

26A. Where the Central Government has, by notification in the Official Gazette, declared in respect of any foreign territory that summonses to be served on defendants actually and voluntarily residing or carrying on business or personally working for gain in that foreign territory may be sent to an officer of the Government of the foreign territory specified by the Central Government, the summonses may be sent to such officer, through the Ministry of the Government of India dealing with foreign affairs or in such other manner as may be specified by the Central Government; and if such officer returns any such summons with an endorsement purporting to have been made by him that the summons has been served on the defendant, such endorsement shall be deemed to be evidence of service.".

Amendment of Order VI.

59. In the First Schedule, in Order VI,—

(*i*) for rule 2, the following rule shall be substituted, namely:—

Pleading to state material facts and not evidence.

"2. (*1*) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures.";

(*ii*) after rule 14, the following rule shall be inserted, namely:—

Address for service of notice.

'14A. (*1*) Every pleading, when filed by a party, shall be accompanied by a statement in the prescribed form, signed as provided in rule 14, regarding the address of the party.

(2) Such address may, from time to time, be changed by lodging in Court a form duly filled up and stating the new address of the party and accompanied by a verified petition.

(3) The address furnished in the statement made under sub-rule (*1*) shall be called the "registered address" of the party, and shall, until duly changed as aforesaid, be deemed to be the address of the party for the purpose of service of all processes in

the suit or in any appeal from any decree or order therein made and for the purpose of execution, and shall hold good, subject as aforesaid, for a period of two years after the final determination of the cause or matter.

(4) Service of any process may be effected upon a party at his registered address in all respects as though such party resided thereat.

(5) Where the registered address of a party is discovered by the Court to be incomplete, false or fictitious, the Court may, either on its own motion, or on the application of any party, order—

(*a*) in the case where such registered address was furnished by a plaintiff, stay of the suit, or

(*b*) in the case where such registered address was furnished by a defendant, his defence be struck out and he be placed in the same position as if he had not put up any defence.

(6) Where a suit is stayed or a defence is struck out under sub-rule (5), the plaintiff or, as the case may be, the defendant may, after furnishing his true address, apply to the Court for an order to set aside the order of stay or, as the case may be, the order striking out the defence.

(7) The Court, if satisfied that the party was prevented by any sufficient cause from filing the true address at the proper time, shall set aside the order of stay or order striking out the defence, on such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit or defence, as the case may be.

(8) Nothing in this rule shall prevent the Court from directing the service of a process at any other address, if, for any reason, it thinks fit to do so.';

(*iii*) for rule 16, the following rule shall be substituted, namely:—

"16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading— Striking out pleadings.

(*a*) which may be unnecessary, scandalous, frivolous or vexatious, or

(*b*) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(*c*) which is otherwise an abuse of the process of the Court.";

(*iv*) rule 17 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) For the removal of doubts, it is hereby declared that the power conferred on the Court to allow either party to alter

or amend his pleadings may be exercised by the Court notwithstanding that after such alteration or amendment the Court may not be competent to try the suit; and where as a result of any amendment or alteration the Court is not competent to try the suit it shall return the plaint for presentation to the proper Court.".

Amendment of Order VII.

60. In the First Schedule, in Order VII,—

(*i*) in rule 2, for the words "the plaint shall state approximately the amount sued for", the words "or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for" shall be substituted;

(*ii*) to rule 6, the following proviso shall be added, namely:—

"Provided that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.";

(*iii*) in sub-rule (*1*) of rule 9, for the words "shall present as many copies", the words "shall present, within such time as may be fixed by the Court or extended by it from time to time, as many copies" shall be substituted;

(*iv*) after sub-rule (*1*) of rule 9, the following sub-rule shall be inserted, namely:—

"(*1A*) The plaintiff shall, within the time fixed by the Court or extended by it under sub-rule (*1*), pay the requisite fee for the service of summons on the defendants.";

(*v*) in sub-rule (*1*) of rule 10, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.";

(*vi*) after rule 10, the following rules shall be inserted, namely:—

Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.

"10A. (*1*) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(*2*) Where an intimation is given to the plaintiff under sub-rule (*1*), the plaintiff may make an application to the Court—

(*a*) specifying the Court in which he proposes to present the plaint after its return,

(*b*) praying that the Court may fix a date for the appearance of the parties in the said Court, and

(*c*) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,—

(a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and

(b) give to the plaintiff and to the defendant notice of such date for appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3),—

(a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and

(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

Power of appellate Court to transfer suit to the proper Court.

10B. Where, on an appeal against an order for the return of plaint, the Court hearing the appeal confirms such order, the Court of appeal may, if the plaintiff by an application so desires, instead of returning the plaint, direct the transfer of the suit to the Court in which the suit should have been instituted (whether such Court is within or without the State in which the Court hearing the appeal is situated), and fix a date for the appearance of the parties in the Court to which the suit is transferred and when the date is so fixed it shall not be necessary for the Court to which the suit is transferred to serve the defendant with the summons for appearance in the suit, unless the Court, for reasons to be recorded, otherwise directs.";

(*vii*) to rule 11, the following proviso shall be added, namely:—

"Provided that the time fixed by the Court for the correction of the valuation or the supply of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.".

Amendment of Order VIII.

61. In the First Schedule, in Order VIII,—

(*i*) for the heading "WRITTEN STATEMENT AND SET-OFF", the heading "WRITTEN STATEMENT, SET-OFF AND COUNTER-CLAIM" shall be substituted;

(*ii*) rule 1 shall be re-numbered as sub-rule (1) of that rule, and—

(a) in sub-rule (1) as so re-numbered, the words "may, and, if so required by the Court," shall be omitted;

(*b*) after sub-rule (*1*) as so re-numbered, the following sub-rules shall be inserted, namely:—

"(*2*) Where the defendant relies on any document (whether or not in his possession or power) in support of his defence or claim for set-off or counter-claim, he shall enter such documents in a list, and shall,—

(*a*) if a written statement is presented, annex the list to the written statement:

Provided that where the defendant, in his written statement, claims a set-off or makes a counter-claim based on a document in his possession or power, he shall produce it in Court at the time of presentation of the written statement and shall at the same time deliver the document or copy thereof to be filed with the written statement;

(*b*) if a written statement is not presented, present the list to the Court at the first hearing of the suit.

(*3*) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(*4*) If no such list is so annexed or presented, the defendant shall be allowed such further period for the purpose as the Court may think fit.

(*5*) A document which ought to be entered in the list referred to in sub-rule (*2*), and which is not so entered, shall not, without the leave of the Court, be received in evidence on behalf of the defendant at the hearing of the suit.

(*6*) Nothing in sub-rule (*5*) shall apply to documents produced for the cross-examination of plaintiff's witnesses or in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or handed over to a witness merely to refresh his memory.

(*7*) Where a Court grants leave under sub-rule (*5*), it shall record its reasons for so doing, and no such leave shall be granted unless good cause is shown to the satisfaction of the Court for the non-entry of the document in the list referred to in sub-rule (*2*).";

(*iii*) rule 5 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rules shall be inserted, namely:—

"(*2*) Where the defendant has not filed a pleading, it shall be lawful for the Court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved.

(*3*) In exercising its discretion under the proviso to sub-rule (*1*) or under sub-rule (*2*), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(*4*) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced.";

(*iv*) after rule 6, the following rules shall be inserted, namely:—

Counter-claim by defendant.

"6A. (*1*) A defendant in a suit, in addition to his right of pleading a set-off under rule 6, may set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the Court.

(*2*) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(*3*) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the Court.

(*4*) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.

Counter-claim to be stated.

6B. Where any defendant seeks to rely upon any ground as supporting a right of counter-claim, he shall, in his written statement, state specifically that he does so by way of counter-claim.

Exclusion of counter-claim.

6C. Where a defendant sets up a counter-claim and the plaintiff contends that the claim thereby raised ought not to be disposed of by way of counter-claim but in an independent suit, the plaintiff may, at any time before issues are settled in relation to the counter-claim, apply to the Court for an order that such counter-claim may be excluded, and the Court may, on the hearing of such application, make such order as it thinks fit.

Discontinuance of suit.

6D. If in any case in which the defendant sets up a counter-claim, the suit of the plaintiff is stayed, discontinued or dismissed, the counter-claim may nevertheless be proceeded with.

Default by defendant to counter-claim.

6E. If the defendant to the counter-claim makes default in putting in a reply to the counter-claim, the Court may pronounce judgment against him or make such order in relation to the counter-claim as it thinks fit.

Relief to defendant in counter-claim.

6F. Where in any suit a set-off or counter-claim is established as a defence against the plaintiff's claim, and any balance is found due to the plaintiff or the defendant, as the case may be, the Court may give judgment to the party entitled to such balance.

Rules relating to written statement to apply.

6G. The rules relating to a written statement by a defendent shall apply to a written statement in answer to a counter-claim.";

(*v*) in rule 7, after the word "set-off", the words "or counter-claim" shall be inserted;

(*vi*) in rule 8, after the word "set-off", the words "or counter-claim" shall be inserted;

(*vii*) after rule 8, the following rule shall be inserted, namely:—

Duty of defendant to produce documents upon which relief is claimed by him.

"8A. (*1*) Where a defendant bases his defence upon a document in his possession or power, he shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document or a copy thereof, to be filed with the written statement.

(*2*) A document which ought to be produced in Court by the defendant under this rule, but is not so produced, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(*3*) Nothing in this rule shall apply to documents produced,—

(*a*) for the cross-examination of the plaintiff's witnesses, or

(*b*) in answer to any case set up by the plaintiff subsequent to the filing of the plaint, or

(*c*) handed over to a witness merely to refresh his memory.";

(*viii*) in rule 9, after the word "set-off", the words "or counter-claim" shall be inserted;

(*ix*) in rule 10,—

(*a*) for the words "is so required", the words and figures "is required under rule 1 or rule 9" shall be substituted;

(*b*) for the words "fixed by the Court, the Court may", the words "permitted or fixed by the Court, as the case may be, the Court shall" shall be substituted;

(*c*) the words "and on the pronouncement of such judgment, a decree shall be drawn up" shall be inserted at the end.

Amendment of Order IX.

62. In the First Schedule, in Order IX,—

(*i*) in rule 2,—

(*a*) after the words "chargeable for such service,", the words and figures "or to present copies of the plaint or concise statements, as required by rule 9 of Order VII," shall be inserted;

(*b*) for the proviso, the following proviso shall be substituted, namely:—

"Provided that no such order shall be made, if, notwithstanding such failure, the defendant attends in person (or by agent when he is allowed to appear by agent) on the day fixed for him to appear and answer.";

(*ii*) in rule 4, for the words and brackets "his not paying the Court-fee and postal charges (if any) required within the time fixed before the issue of the summons", the words and figure "such failure as is referred to in rule 2" shall be substituted;

(*iii*) in rule 5, in sub-rule (*1*), for the words "three months", the words "one month" shall be substituted;

(*iv*) in rule 6, in sub-rule (*1*), for clause (*a*), the following clause shall be substituted, namely:—

"(*a*) if it is proved that the summons was duly served, the Court may make an order that the suit be heard *ex parte*; and may, if it thinks fit, give a judgment on the basis that the facts stated in the plaint are true;";

(*v*) to rule 13, after the proviso, the following further proviso shall be added, namely:—

"Provided further that no Court shall set aside a decree passed *ex parte* merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.";

(*vi*) in rule 13, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation*.—Where there has been an appeal against a decree passed *ex parte* under this rule, and the appeal has been disposed of, no application shall lie under this rule for setting aside that *ex parte* decree.".

Amendment of Order X.

63. In the First Schedule, in Order X, for rule 2, the following rule shall be substituted, namely:—

Oral examination of party, or companion of party.

"2. (*1*) At the first hearing of the suit, the Court—

(*a*) shall, with a view to elucidating matters in controversy in the suit, examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit; and

(*b*) may orally examine any person able to answer any material question relating to the suit by whom any party appearing in person or present in Court or his pleader is accompanied.

(*2*) At any subsequent hearing, the Court may orally examine any party appearing in person or present in Court, or any person able to answer any material question relating to the suit by whom such party or his pleader is accompanied.

(*3*) The Court may, if it thinks fit, put in the course of an examination under this rule questions suggested by either party.".

Amendment of Order XI.

64. In the First Schedule, in Order XI,—

(*i*) in rule 6, for the words "or on any other ground", the words "or on the ground of privilege or any other ground" shall be substituted;

(*ii*) in rule 15, after the words "in whose pleadings or affidavits reference is made to any document,", the words "or who has entered any document in any list annexed to his pleadings," shall be inserted;

(*iii*) in rule 19, in sub-rule (*2*), the words "unless the document relates to matters of State" shall be inserted at the end;

(*iv*) rule 21 shall be re-numbered as sub-rule (*1*) of that rule, and,—

(*a*) in sub-rule (*1*), as so re-numbered, for the words "an order may be made accordingly", the words "an order may be made on such application accordingly after notice to the parties and after giving them a reasonable opportunity of being heard" shall be substituted;

(*b*) after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where an order is made under sub-rule (*1*) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action.".

Amendment of Order XII.

65. In the First Schedule, in Order XII,—

(*i*) after rule 2, the following rule shall be inserted, namely:—

Document to be deemed to be admitted if not denied after service of notice to admit documents.

"2A. (*1*) Every document which a party is called upon to admit, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of that party or in his reply to the notice to admit documents, shall be deemed to be admitted except as against a person under a disability:

Provided that the Court may, in its discretion and for reasons to be recorded, require any document so admitted to be proved otherwise than by such admission.

(*2*) Where a party unreasonably neglects or refuses to admit a document after the service on him of the notice to admit documents, the Court may direct him to pay costs to the other party by way of compensation.";

(*ii*) for rule 6, the following rule shall be substituted, namely:—

Judgment on admissions.

"6. (*1*) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think just having regard to such admissions.

(*2*) Whenever a judgment is pronounced under sub-rule (*1*), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the said judgment was pronounced.".

Amendment of Order XIII.

66. In the First Schedule, in Order XIII,—

(*i*) in rule 1,—

(*a*) in the marginal heading, for the words "at first hearing", the words "at or before the settlement of issues" shall be substituted;

(*b*) in sub-rule (*1*), for the words "at the first hearing of the suit", the words "at or before the settlement of issues" shall be substituted;

(*ii*) rule 2 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Nothing in sub-rule (*1*) shall apply to documents.—

(*a*) produced for the cross-examination of the witnesses of the other party, or

(*b*) handed over to a witness merely to refresh his memory.";

(*iii*) in rule 9, in sub-rule (*1*), for the first proviso, the following proviso shall be substituted, namely:—

"Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor—

(*a*) delivers to the proper officer for being substituted for the original,—

(*i*) in the case of a party to the suit, a certified copy, and

(*ii*) in the case of any other person, an ordinary copy which has been examined, compared and certified in the manner mentioned in sub-rule (*2*) of rule 17 of Order VII, and

(*b*) undertakes to produce the original, if required to do so:".

Amendment of Order XIV.

67. In the First Schedule, in Order XIV,—

(*i*) in rule 1, in sub-rule (5), for the words "after such examination of the parties as may appear necessary", the words and figures "after examination under rule 2 of Order X and after hearing the parties or their pleaders" shall be substituted;

(*ii*) for rule 2, the following rule shall be substituted, namely:—

Court to pronounce judgment on all issues.

"2. (*1*) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (*2*), pronounce judgment on all issues.

(*2*) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

(*a*) the jurisdiction of the Court, or

(*b*) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.".

Amendment of Order XV.

68. In the First Schedule, in Order XV, rule 2 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and the decree shall bear the date on which the judgment was pronounced.".

Amendment of Order XVI.

69. In the First Schedule, in Order XVI,—

(*i*) for rule 1, the following rule shall be substituted, namely:—

List of witnesses and summons to witnesses.

"1. (*1*) On or before such date as the Court may appoint, and not later than ten days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

(*2*) A party desirous of obtaining any summons for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned.

(*3*) The Court may, for reasons to be recorded, permit a party to call, whether by summoning through Court or otherwise, any witness, other than those whose names appear in the list referred to in sub-rule (*1*), if such party shows sufficient cause for the omission to mention the name of such witness in the said list.

(*4*) Subject to the provisions of sub-rule (*2*), summonses referred to in this rule may be obtained by the parties on an application to the Court or to such officer as may be appointed by the Court in this behalf.";

(*ii*) for rule 1A, the following rule shall be substituted, namely:—

Production of witnesses without summons through Court.

"1A. Subject to the provisions of sub-rule (*3*) of rule 1, any party to the suit may, without applying for summons under rule 1, bring any witness to give evidence or to produce documents.";

(*iii*) in rule 2, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

Expenses to be directly paid to witnesses.

"(*4*) Where the summons is served directly by the party on a witness, the expenses referred to in sub-rule (*1*) shall be paid to the witness by the party or his agent.";

(*iv*) after rule 7, the following rule shall be inserted, namely:—

Summons given to party for service.

"7A. (*1*) The Court may, on the application of any party for the issue of a summons for the attendance of any person, permit such party to effect service of such summons on such person and shall, in such a case, deliver the summons to such party for service.

(*2*) The service of such summons shall be effected by or on behalf of such party by delivering or tendering to the witness personally a copy thereof signed by the Judge or such officer of the Court as he may appoint in this behalf and sealed with the seal of the Court.

(3) The provisions of rules 16 and 18 of Order V shall apply to a summons personally served under this rule as if the person effecting service were a serving officer.

(4) If such summons, when tendered, is refused or if the person served refuses to sign an acknowledgment of service or for any reason such summons cannot be served personally, the Court shall, on the application of the party, re-issue such summons to be served by the Court in the same manner as a summons to a defendant.

(5) Where a summons is served by a party under this rule, the party shall not be required to pay the fees otherwise chargeable for the service of summons.";

(*v*) in rule 8, for the words "under this Order", the words, figure and letter "under this Order, not being a summons delivered to a party for service under rule 7A," shall be substituted;

(*vi*) in rule 10, for sub-rule (*1*), the following sub-rule shall be substituted, namely:—

"(*1*) Where a person, to whom a summons has been issued either to attend to give evidence or to produce a document, fails to attend or to produce the document in compliance with such summons, the Court—

(*a*) shall, if the certificate of the serving officer has not been verified by affidavit, or if service of the summons has been effected by a party or his agent, or

(*b*) may, if the certificate of the serving officer has been so verified,

examine on oath the serving officer or the party or his agent, as the case may be, who has effected service or cause him to be so examined by any Court touching the service or non-service of the summons.";

(*vii*) rule 12 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Notwithstanding that the Court has not issued a proclamation under sub-rule (*2*) of rule 10 nor issued a warrant nor ordered attachment under sub-rule (*3*) of that rule, the Court may impose fine under sub-rule (*1*) of this rule after giving notice to such person to show cause why the fine should not be imposed.";

(*viii*) in rule 14, for the words "to examine any person other than a party to the suit", the words "to examine any person, including a party to the suit," shall be substituted;

(*ix*) in rule 19, in clause (*b*), for the word "fifty", the words "one hundred", and for the words "two hundred miles", the words "five hundred kilometres" shall be substituted;

(*x*) to rule 19, the following proviso shall be added, namely:—

"Provided that where transport by air is available between the two places mentioned above and the witness is paid the fare by air, he may be ordered to attend in person.".

Insertion of new Order XVIA.

70. In the First Schedule, after Order XVI, the following Order shall be inserted, namely:—

'ORDER XVIA

ATTENDANCE OF WITNESSES CONFINED OR DETAINED IN PRISONS

Defini-tions.

1. In this Order,—

(*a*) "detained" includes detained under any law providing for preventive detention;

(*b*) "prison" includes—

(*i*) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail; and

(*ii*) any reformatory, borstal institution or other institution of a like nature.

Power to require attendance of prisoners to give evidence.

2. Where it appears to a Court that the evidence of a person confined or detained in a prison within the State is material in a suit, the Court may make an order requiring the officer in charge of the prison to produce that person before the Court to give evidence:

Provided that, if the distance from the prison to the Court-house is more than twenty-five kilometres, no such order shall be made unless the Court is satisfied that the examination of such person on commission will not be adequate.

Expenses to be paid into Court.

3. (*1*) Before making any order under rule 2, the Court shall require the party at whose instance or for whose benefit the order is to be issued, to pay into Court such sum of money as appears to the Court to be sufficient to defray the expenses of the execution of the order, including the travelling and other expenses of the escort provided for the witness.

(*2*) Where the Court is subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

Power of State Government to exclude certain persons from the operation of rule 2.

4. (*1*) The State Government may, at any time, having regard to the matters specified in sub-rule (*2*), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under rule 2, whether before or after the order of the State Government, shall have effect in respect of such person or class of persons.

(*2*) Before making an order under sub-rule (*1*), the State Government shall have regard to the following matters, namely:—

(*a*) the nature of the offence for which, or the grounds on which, the person or class of persons have been ordered to be confined or detained in prison;

(*b*) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison; and

(*c*) the public interest, generally.

Officer in charge of prison to abstain from carrying out order in certain cases.

5. Where the person in respect of whom an order is made under rule 2—

(*a*) is certified by the medical officer attached to the prison as unfit to be removed from the prison by reason of sickness or infirmity; or

(*b*) is under committal for trial or under remand pending trial or pending a preliminary investigation; or

(*c*) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or

(*d*) is a person to whom an order made by the State Government under rule 4 applies,

the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining.

Prisoner to be brought to Court in custody.

6. In any other case, the officer in charge of the prison shall, upon delivery of the Court's order, cause the person named therein to be taken to the Court so as to be present at the time mentioned in such order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he is confined or detained.

Power to issue commission for examination of witness in prison.

7. (*1*) Where it appears to the Court that the evidence of a person confined or detained in a prison, whether within the State or elsewhere in India, is material in a suit but the attendance of such person cannot be secured under the preceding provisions of this Order, the Court may issue a commission for the examination of that person in the prison in which he is confined or detained.

(2) The provisions of Order XXVI shall, so far as may be, apply in relation to the examination on commission of such person in prison as they apply in relation to the examination on commission of any other person.'.

Amendment of Order XVII.

71. In the First Schedule, in Order XVII,—

(*i*) in rule 1, for the proviso to sub-rule (2), the following proviso shall be substituted, namely:—

"Provided that,—

(*a*) when the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that,

for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary,

(*b*) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party,

(*c*) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment,

(*d*) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time,

(*e*) where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.";

(*ii*) in rule 2, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the Court may, in its discretion, proceed with the case as if such party were present.";

(*iii*) in rule 3, for the words "the Court may, notwithstanding such default, proceed to decide the suit forthwith.", the following shall be substituted, namely:—

"the Court may, notwithstanding such default,—

(*a*) if the parties are present, proceed to decide the suit forthwith; or

(*b*) if the parties are, or any of them is, absent, proceed under rule 2.".

Amendment of Order XVIII.

72. In the First Schedule, in Order XVIII,—

(*i*) in rule 2, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

"(*4*) Notwithstanding anything contained in this rule, the Court may, for reasons to be recorded, direct or permit any party to examine any witness at any stage.";

(*ii*) after rule 3, the following rule shall be inserted, namely:—

Party to appear before other witnesses.

"3A. Where a party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage.";

(*iii*) for rule 5, the following rule shall be substituted, namely:—

"5. In cases in which an appeal is allowed, the evidence of each witness shall be,— How evidence shall be taken in appealable cases.

(*a*) taken down in the language of the Court,—

(*i*) in writing by, or in the presence and under the personal direction and superintendence of, the Judge, or

(*ii*) from the dictation of the Judge directly on a typewriter; or

(*b*) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.";

(*iv*) in rule 8, after the words "in writing by the Judge,", the words "or from his dictation in the open Court, or recorded mechanically in his presence," shall be inserted;

(*v*) for rule 9, the following rule shall be substituted, namely:—

"9. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such of the parties as appear by pleaders, do not object to having such evidence as is given in English, being taken down in English, the Judge may so take it down or cause it to be taken down."; When evidence may be taken in English.

(*vi*) for rule 13, the following rule shall be substituted, namely:—

"13. In cases in which an appeal is not allowed, it shall not be necessary to take down or dictate or record the evidence of the witnesses at length; but the Judge, as the examination of each witness proceeds, shall make in writing, or dictate directly on the typewriter, or cause to be mechanically recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the Judge or otherwise authenticated, and shall form part of the record."; Memorandum of evidence in unappealable cases.

(*vii*) rule 14 shall be omitted;

(*viii*) after rule 17, the following rule shall be inserted, namely:—

"17A. Where a party satisfies the Court that, after the exercise of due diligence, any evidence was not within his knowledge or could not be produced by him at the time when that party was leading his evidence, the Court may permit that party to produce that evidence at a later stage on such terms as may appear to it to be just.". Production of evidence not previously known or which could not be produced despite due diligence.

73. In the First Schedule, in Order XX,— Amendment of Order XX.

(*i*) rule 1 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(2) Where a written judgment is to be pronounced, it shall be sufficient if the findings of the Court on each issue and the final order passed in the case are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or the pleaders immediately after the judgment is pronounced.";

(*ii*) in rule 2, for the words "A Judge may", the words "A Judge shall" shall be substituted;

(*iii*) after rule 5, the following rule shall be inserted, namely:—

Court to inform parties as to where an appeal lies in cases where parties are not represented by pleaders.

"5A. Except where both the parties are represented by pleaders, the Court shall, when it pronounces its judgment in a case subject to appeal, inform the parties present in Court as to the Court to which an appeal lies and the period of limitation for the filing of such appeal.";

(*iv*) in rule 6, in sub-rule (*1*), for the words "names and descriptions of the parties", the words "names and descriptions of the parties, their registered addresses," shall be substituted;

(*v*) after rule 6, the following rules shall be inserted, namely:—

Last paragraph of judgment to indicate in precise terms the reliefs granted.

"6A. (*1*) The last paragraph of the judgment shall state in precise terms the relief which has been granted by such judgment.

(*2*) Where a decree is not drawn up within one month from the date on which the judgment is pronounced,—

(*a*) a party desirous of appealing against the decree may prefer an appeal without filing a copy of the decree, and the last paragraph of the judgment shall, for the purpose of rule 1 of Order XLI, be treated as the decree; and

(*b*) the last paragraph of the judgment shall also be deemed to be the decree for the purpose of execution, and until a decree is drawn up, the party interested shall be entitled to apply for a copy of that paragraph only without being required to apply for a copy of the whole of the judgment.

Copies of type-written judgments when to be made available.

6B. Where the judgment is type-written, copies of the type-written judgment shall, where it is practicable so to do, be made available to the parties immediately after the pronouncement of the judgment on payment, by the party applying for such copy, of such charges as may be specified in the rules made by the High Court.";

(*vi*) in rule 11, in sub-rule (*1*), for the words "at the time of passing the decree order that", the words "incorporate in the decree, after hearing such of the parties who had appeared personally or by pleader at the last hearing, before judgment, an order that" shall be substituted;

(*vii*) after rule 12, the following rules shall be inserted, namely:—

Decree for specific performance of contract for the sale or lease of immovable property.

'12A. Where a decree for the specific performance of a contract for the sale or lease of immovable property orders that the purchase-money or other sum be paid by the purchaser or lessee, it shall specify the period within which the payment shall be made.

Execution of a document or endorsement of a negotiable instrument.

12B. (*1*) Where the judgment-debtor neglects or refuses to obey a decree for the execution of a document or for the endorsement of a negotiable instrument, the decree-holder may, on such neglect or failure, prepare a draft of the document or endorsement, as the case may be, in accordance with the terms of the decree and deliver the same to the Court.

(*2*) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections, if any, to be made within such time as the Court may fix in this behalf.

(*3*) Where the judgment-debtor objects to the draft, he shall state his objections in writing within the time fixed under sub-rule (*2*), and the Court shall make such order approving or altering the draft as it thinks fit.

(*4*) The decree-holder shall deliver to the Court a copy of the draft, with such alteration, if any, as the Court may direct, upon the proper stamp paper, if required by any law for the time being in force; and the Judge, or such other officer as may be appointed in this behalf, shall execute the document or make the endorsement, as the case may be.

(*5*) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:—

"CD Judge of the Court of.... (*or as the case may be*) for AB, in a suit by EF against AB"

and shall have the same effect as the execution of the document or the endorsement of a negotiable instrument by the party ordered to execute or endorse the same.

(6) (*a*) Where the registration of the document is required under any law for the time being in force, the Court, or such officer of the Court as may be authorised in this behalf by the Court, shall cause the document to be registered in accordance with such law.

(*b*) Where the registration of the document is not so required, but the decree-holder desires it to be registered, the Court may make such order as it thinks fit.

(*c*) Where the Court makes any order for the registration of any document, it may make such order as it thinks fit as to the expenses of registration.';

(*viii*) in rule 19, in sub-rules (*1*) and (*2*), after the word "set-off", wherever it occurs, the words "or counter-claim" shall be inserted.

Insertion of new Order XXA.

74. In the First Schedule, after Order XX, the following Order shall be inserted, namely:—

"ORDER XXA

COSTS

Provisions relating to certain items.

1. (*1*) Without prejudice to the generality of the provisions of this Code relating to costs, the Court may award costs in respect of,—

(*a*) expenditure incurred for the giving of any notice required to be given by law before the institution of the suit;

(*b*) expenditure incurred on any notice which, though not required to be given by law, has been given by any party to the suit to any other party before the institution of the suit;

(*c*) expenditure incurred on the typing, writing or printing of pleadings filed by any party;

(*d*) charges paid by a party for inspection of the records of the Court for the purposes of the suit;

(*e*) expenditure incurred by a party for producing witnesses, even though not summoned through Court; and

(*f*) in the case of appeals, charges incurred by a party for obtaining any copies of judgments and decrees which are required to be filed along with the memorandum of appeal.

(*2*) The award of costs under this rule shall be in accordance with such rules as the High Court may make in that behalf.

Pleader's fees.

2. In calculating costs, no amount shall be included as pleader's fees unless a receipt signed by the pleader or a certificate in writing signed by him and stating the amount received has been filed in Court.".

75. In the First Schedule, in Order XXI,— Amendment of Order XXI.

(*i*) for rule 1, the following rule shall be substituted, namely:—

"1. (*1*) All money payable under a decree shall be paid as follows, namely:— Modes of paying money under decree.

(*a*) by deposit into the Court whose duty it is to execute the decree, or sent to that Court by postal money order or through a bank; or

(*b*) out of Court to the decree-holder by postal money order or through a bank or by any other mode wherein payment is evidenced in writing; or

(*c*) otherwise, as the Court which made the decree, directs.

(*2*) Where any payment is made under clause (*a*) or clause (*c*) of sub-rule (*1*), the judgment-debtor shall give notice thereof to the decree-holder either through the Court or directly to him by registered post, acknowledgment due.

(*3*) Where money is paid by postal money order or through a bank under clause (*a*) or clause (*b*) of sub-rule (*1*), the money order or payment through bank, as the case may be, shall accurately state the following particulars, namely:—

(*a*) the number of the original suit;

(*b*) the names of the parties or where there are more than two plaintiffs or more than two defendants, as the case may be, the names of the first two plaintiffs and the first two defendants;

(*c*) how the money remitted is to be adjusted, that is to say, whether it is towards the principal, interest or costs;

(*d*) the number of the execution case of the Court, where such case is pending; and

(*e*) the name and address of the payer.

(*4*) On any amount paid under clause (*a*) or clause (*c*) of sub-rule (1), interest, if any, shall cease to run from the date of service of the notice referred to in sub-rule (*2*).";

(*ii*) in rule 2,—

(*a*) in sub-rule (*1*), for the words "or the decree is otherwise adjusted", the words "or a decree of any kind is otherwise adjusted" shall be substituted;

(*b*) in sub-rule (*2*), after the words "the judgment-debtor", the words "or any person who has become surety for the judgment-debtor" shall be inserted;

(*c*) after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

"(*2A*) No payment or adjustment shall be recorded at the instance of the judgment-debtor unless—

(*a*) the payment is made in the manner provided in rule 1; or

(*b*) the payment or adjustment is proved by documentary evidence; or

(*c*) the payment or adjustment is admitted by, or on behalf of, the decree-holder in his reply to the notice or before the Court.";

(*iii*) for rule 5, the following rule shall be substituted, namely:—

Mode of transfer.

"5. Where a decree is to be sent for execution to another Court, the Court which passed such decree shall send the decree directly to such other Court whether or not such other Court is situated in the same State, but the Court to which the decree is sent for execution shall, if it has no jurisdiction to execute the decree, send it to the Court having such jurisdiction.";

(*iv*) in rule 11, in sub-rule (*2*), in clause (*j*), for sub-clause (*ii*), the following sub-clause shall be substituted, namely:—

"(*ii*) by the attachment, or by the attachment and sale, or by the sale without attachment, of any property;";

(*v*) after rule 11, the following rule shall be inserted, namely:—

Application for arrest to state grounds.

"11A. Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.";

(*vi*) in rule 16, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Nothing in this rule shall affect the provisions of section 146, and a transferee of rights in the property, which is the subject-matter of the suit, may apply for execution of the decree without a separate assignment of the decree as required by this rule.";

(*vii*) in rule 17,—

(*a*) in sub-rule (*1*), for the words "the Court may reject the application, or may allow", the words "the Court shall allow" shall be substituted;

(*b*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) If the defect is not so remedied, the Court shall reject the application:

Provided that where, in the opinion of the Court, there is some inaccuracy as to the amount referred to in clauses (*g*) and (*h*) of sub-rule (*2*) of rule 11, the Court shall, instead of rejecting the application, provisionally, decide (without prejudice to the right of the parties to have the amount finally decided in the course of the proceedings) the amount and make an order for the execution of the decree for the amount so provisionally decided.";

(*viii*) in rule 22, in sub-rule (*1*),—

(*a*) for the words "one year", wherever they occur, the words "two years" shall be substituted;

(*b*) in clause (*b*), the word "or" shall be inserted at the end;

(*c*) after clause (*b*), the following clause shall be inserted, namely:—

"(*c*) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent,";

(*ix*) after rule 22, the following rule shall be inserted, namely:—

Sale not to be set aside on the death of the judgment-debtor before the sale but after the proclamation of sale.

"22A. Where any property is sold in execution of a decree, the sale shall not be set aside merely by reason of the death of the judgment-debtor between the date of issue of the proclamation of sale and the date of the sale notwithstanding the failure of the decree-holder to substitute the legal representative of such deceased judgment-debtor, but, in case of such failure, the court may set aside the sale if it is satisfied that the legal representative of the deceased judgment-debtor has been prejudiced by the sale.";

(*x*) in rule 24, for sub-rule (*3*), the following sub-rule shall be substituted, namely:—

"(*3*) In every such process, a day shall be specified on or before which it shall be executed and a day shall also be specified on or before which it shall be returned to the Court, but no process shall be deemed to be void if no day for its return is specified therein.";

(*xi*) in rule 26, in sub-rule (*3*), for the words "the Court may require", the words "the Court shall require" shall be substituted;

(*xii*) in rue 29,—

(*a*) after the words "a decree of such Court", the words "or of a decree which is being executed by such Court" shall be inserted;

(*b*) the following proviso shall be added at the end, namely:—

"Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.";

(*xiii*) in rule 31, in sub-rules (*2*) and (*3*), for the words "six months", wherever they occur, the words "three months" shall be substituted;

(*xiv*) in rule 32, in sub-rules (*3*) and (*4*), for the words "one year", wherever they occur, the words "six months" shall be substituted;

(*xv*) rule 34 shall be omitted;

(*xvi*) rule 41 shall be re-numbered as sub-rule (*1*) of that rule, and—

(*a*) in sub-rule (*1*) as so re-numbered, in clause (*b*), for the words "in the case of a corporation", the words "where the judgment-debtor is a corporation" shall be substituted;

(*b*) after sub-rule (*1*) as so re-numbered, the following sub-rules shall be inserted, namely:—

"(*2*) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (*1*), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.

(*3*) In case of disobedience of any order made under sub-rule (*2*), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding six months unless before the expiry of such term the Court directs his release.";

(*xvii*) after rule 43, the following rule shall be inserted, namely:—

Custody of movable property.

'43A. (*1*) Where the property attached consists of live-stock, agricultural implements or other articles which cannot conveniently be removed and the attaching officer does not act under the proviso to rule 43, he may, at the instance of the judgment-debtor or of the decree-holder or of any other person claiming to be interested in such property, leave it in the village or place where it has been attached, in the custody of any respectable person (hereinafter referred to as the "custodian").

(*2*) If the custodian fails, after due notice, to produce such property at the place named by the Court before the officer deputed for the purpose or to restore it to the person in whose favour restoration is ordered by the Court, or if the property, though so produced or restored, is not in the same condition as it was when it was entrusted to him,—

(*a*) the custodian shall be liable to pay compensation to the decree-holder, judgment-debtor or any other person who is found to be entitled to the restoration thereof, for any loss or damage caused by his default; and

(*b*) such liability may be enforced—

(*i*) at the instance of the decree-holder, as if the custodian were a surety under section 145;

(*ii*) at the instance of the judgment-debtor or such other person, on an application in execution; and

(*c*) any order determining such liability shall be appealable as a decree.';

(*xviii*) after rule 46, the following rules shall be inserted, namely:—

Notice to garnishee.

"46A. (*1*) The Court may in the case of a debt (other than a debt secured by a mortgage or a charge) which has been attached under rule 46, upon the application of the attaching creditor, issue notice to the garnishee liable to pay such debt, calling upon him either to pay into Court the debt due from him to the judgment-debtor or so much thereof as may be sufficient to satisfy the decree and costs of execution, or to appear and show cause why he should not do so.

(*2*) An application under sub-rule (*1*) shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the garnishee is indebted to the judgment-debtor.

(*3*) Where the garnishee pays in the Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of the execution, the Court may direct that the amount may be paid to the decree-holder towards satisfaction of the decree and costs of the execution.

Order against garnishee.

46B. Where the garnishee does not forthwith pay into Court the amount due from him to the judgment-debtor or so much thereof as is sufficient to satisfy the decree and the costs of execution, and does not appear and show cause in answer to the notice, the Court may order the garnishee to comply with the terms of such notice and on such order execution may issue as though such order were a decree against him.

Trial of disputed questions.

46C. Where the garnishee disputes liability, the Court may order that any issue or question necessary for the determination of liability shall be tried as if it were an issue in a suit, and upon the determination of such issue shall make such order or orders as it deems fit:

Provided that if the debt in respect of which the application under rule 46A is made is in respect of a sum of money beyond the pecuniary jurisdiction of the Court, the Court shall send the execution case to the Court of the District Judge to which the said Court is subordinate, and thereupon the Court of the District Judge or any other competent Court to which it may be transferred by the District Judge shall deal with it in the same manner as if the case had been originally instituted in that Court.

Procedure where debt belongs to third person.

46D. Where it is suggested or appears to be probable that the debt belongs to some third person, or that any third person has a lien or charge on, or other interest in, such debt, the Court may order such third person to appear and state the nature and particulars of his claim, if any, to such debt and prove the same.

Order as regards third person.

46E. After hearing such third person and any person or persons who may subsequently be ordered to appear, or where such third or other person or persons do not appear when so ordered, the Court may make such order as is hereinbefore provided, or

such other order or orders upon such terms, if any, with respect to the lien, charge or interest, as the case may be, of such third or other person or persons as it may deem fit and proper.

Payment by garnishee to be valid discharge.

46F. Payment made by the garnishee on notice under rule 46A or under any such order as aforesaid shall be a valid discharge to him as against the judgment-debtor and any other person ordered to appear as aforesaid for the amount paid or levied, although the decree in execution of which the application under rule 46A was made, or the order passed in the proceedings on such application, may be set aside or reversed.

Costs.

46G. The costs of any application made under rule 46A and of any proceeding arising therefrom or incidental thereto shall be in the discretion of the Court.

Appeals.

46H. An order made under rule 46B, rule 46C or rule 46E shall be appealable as a decree.

Application to negotiable instruments.

46I. The provisions of rules 46A to 46H (both inclusive) shall, so far as may be, apply in relation to negotiable instruments attached under rule 51 as they apply in relation to debts.";

(*xix*) in rule 48,—

(*a*) in sub-rule (*1*), after the words "local authority", the words and figures "or of a servant of a corporation engaged in any trade or industry which is established by a Central, Provincial or State Act, or a Government company as defined in section 617 of the Companies Act, 1956," shall be inserted; 1 of 1956.

(*b*) for sub-rule (*3*), the following sub-rule shall be substituted, namely:—

"(*3*) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (*2*), shall, without further notice or other process, bind the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of any salary or allowances payable out of the Consolidated Fund of India or the Consolidated Fund of the State or the funds of a railway company or local authority or corporation or Government company in India; and the appropriate Government or the railway company or local authority or corporation or Government company, as the case may be, shall be liable for any sum paid in contravention of this rule.";

(*c*) for the *Explanation*, the following *Explanation* shall be substituted, namely:—

'*Explanation.*—In this rule, "appropriate Government" means—

(*i*) as respects any person in the service of the Central government, or any servant of a railway administration or of a cantonment authority or of the port autho-

rity of a major port, or any servant of a corporation engaged in any trade or industry which is established by a Central Act, or any servant of a Government company in which any part of the share capital is held by the Central Government or by more than one State Governments or partly by the Central Government and partly by one or more State Governments, the Central Government.;

(*ii*) as respects any other servant of the Government, or a servant of any other local or other authority, or any servant of a corporation engaged in any trade or industry which is established by a Provincial or State Act, or a servant of any other Government company, the State Government.';

(*xx*) after rule 48, the following rule shall be inserted, namely:—

Attachment of salary or allowances of private employees.

"48A. (*1*) Where the property to be attached is the salary or allowances of an employee other than an employee to whom rule 48 applies, the Court, where the disbursing officer of the employee is within the local limits of the Court's jurisdiction, may order that the amount shall, subject to the provisions of section 60, be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and upon notice of the order to such disbursing officer, such disbursing officer shall remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(*2*) Where the attachable portion of such salary or allowances is already being withheld or remitted to the Court in pursuance of a previous and unsatisfied order of attachment, the disbursing officer shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(*3*) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (*2*), shall, without further notice or other process, bind the employer while the judgment-debtor is within the local limits to which this Code for the time being extends and while he is beyond those limits, if he is in receipt of salary or allowances payable out of the funds of an employer in any part of India; and the employer shall be liable for any sum paid in contravention of this rule.";

(*xxi*) in rule 50,—

9 of 1872. 9 of 1932.

(*a*) in the proviso to sub-rule (*1*), for the words and figures "section 247 of the Indian Contract Act, 1872", the words and figures "section 30 of the Indian Partnership Act, 1932" shall be substituted;

(*b*) after sub-rule (*4*), the following sub-rule shall be inserted, namely:—

"(*5*) Nothing in this rule shall apply to a decree passed against a Hindu undivided family by virtue of the provisions of rule 10 of Order XXX.";

(*xxii*) in rule 53,—

(*a*) in sub-rule (*1*), for sub-clause (*ii*) of clause (*b*), the following sub-clause shall be substituted, namely:—

"(*ii*) (*a*) the holder of the decree sought to be executed, or

(*b*) his judgment-debtor with the previous consent in writing of such decree-holder, or with the permission of the attaching Court,

applies to the Court receiving such notice to execute the attached decree.";

(*b*) in sub-rule (*6*), after the words "in contravention of such order", the words "with knowledge thereof or" shall be inserted;

(*xxiii*) in rule 54,—

(*a*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.";

(*b*) in sub-rule (*2*), the words "and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village," shall be added at the end;

(*xxiv*) for rule 57, the following rule shall be substituted, namely:—

Determination of attachment.

"57. (*1*) Where any property has been attached in execution of a decree and the Court, for any reason, passes an order dismissing the application for the execution of the decree, the Court shall direct whether the attachment shall continue or cease.

(*2*) If the Court omits to give such direction, the attachment shall be deemed to continue.";

(*xxv*) for the sub-heading "*Investigation of claims and objections*" and for rules 58 to 63, the following sub-heading and rules shall be substituted, namely:—

"*Adjudication of claims and objections*

Adjudication of claims to or objections to attachment of, attached property.

58. (*1*) Where any claim is preferred to, or any objection is made to the attachment of any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

Provided that no such claim or objection shall be entertained—

(a) where, before the claim is preferred or objection is made, the property attached has already been sold; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,—

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

(b) disallow the claim or objection; or

(c) continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.

Stay of sale.

59. Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may—

(a) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or

(b) if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or, that pending such adjudication, the property may be sold but the sale shall not be confirmed,

and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.";

(*xxvi*) to rule 66, to sub-rule (2), the following provisos shall be added, namely:—

"Provided that where notice of the date for settling the terms of the proclamation has been given to the judgment-debtor by means of an order under rule 54, it shall not be necessary to give notice under this rule to the judgment-debtor unless the Court otherwise directs:

Provided further that nothing in this rule shall be construed as requiring the Court to enter in the proclamation of sale its own estimate of the value of the property, but the proclamation shall include the estimate, if any, given, by either or both of the parties.";

(*xxvii*) in rule 68,—

(*a*) for the words "thirty days", the words "fifteen days" shall be substituted;

(*b*) for the words "fifteen days", the words "seven days" shall be substituted;

(*xxviii*) in rule 69, in sub-rule (2), for the word "seven", the word "thirty" shall be substituted;

(*xxix*) after rule 72, the following rule shall be inserted, namely:—

Mortgagee not to bid at sale without the leave of the Court.

"72A. (1) Notwithstanding anything contained in rule 72, a mortgagee of immovable property shall not bid for or purchase property sold in execution of a decree on the mortgage unless the Court grants him leave to bid for or purchase the property.

(2) If leave to bid is granted to such mortgagee, then the Court shall fix a reserve price as regards the mortgagee, and unless the Court otherwise directs, the reserve price shall be—

(*a*) not less than the amount then due for principal, interest and costs in respect of the mortgage if the property is sold in one lot; and

(*b*) in the case of any property sold in lots, not less than such sum as shall appear to the Court to be properly attributable to each lot in relation to the amount then due for principal, interest and costs on the mortgage.

(3) In other respects, the provisions of sub-rules (2) and (3) of rule 72 shall apply in relation to purchase by the decree-holder under that rule.";

(*xxx*) in rule 89, in sub-rule (1), for the words "any person, either owning such property or holding an interest therein by virtue of a title acquired before such sale", the words "any person claiming an interest in the property sold at the time of the sale or at the time of making the application, or acting for or in the interest of such person," shall be substituted;

(*xxxi*) for rule 90, the following rule shall be substituted, namely:—

"90. (*1*) Where any immovable property has been sold in execution of a decree, the decree-holder, or the purchaser, or any other person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it. Application to set aside sale on ground of irregularity or fraud.

(*2*) No sale shall be set aside on the ground of irregularity or fraud in publishing or conducting it unless, upon the facts proved, the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

(*3*) No application to set aside a sale under this rule shall be entertained upon any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

Explanation.—The mere absence of, or defect in, attachment of the property sold shall not, by itself, be a ground for setting aside a sale under this rule.";

(*xxxii*) in rule 92,—

(*a*) in sub-rule (*1*), for the words "the Court shall", the words and figures "the Court shall, subject to the provisions of rule 89," shall be substituted;

(*b*) in sub-rule (*2*), for the words "the Court shall make an order setting aside the sale", the following shall be substituted, namely:—

"or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the Court, the Court shall make an order setting aside the sale";

(*c*) after sub-rule (*3*), the following sub-rules shall be inserted, namely:—

"(*4*) Where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor shall be necessary parties to the suit.

(*5*) If the suit referred to in sub-rule (*4*) is decreed, the Court shall direct the decree-holder to refund the money to the auction-purchaser, and where such an order is passed the execution proceeding in which the sale had been held shall, unless the Court otherwise directs, be revived at the stage at which the sale was ordered.";

(*xxxiii*) in rule 97, for sub-rule (*2*), the following sub-rule shall be substituted, namely:—

"(*2*) Where any application is made under sub-rule (*1*), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.";

(*xxxiv*) for rules 98 to 103, the following rules shall be substituted, namely:—

Orders after adjudication.

"98. (*1*) Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (*2*),—

(*a*) allow the application and direct that the applicant be put into possession of the property; or

(*b*) dismiss the application; or

(*c*) pass such order as in the circumstances of the case it deems fit.

(*2*) Where upon such determination the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

Dispossession by decree-holder or purchaser.

99. (*1*) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(*2*) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Order to be passed upon application complaining of dispossession

100. Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination,—

(*a*) allow the application and direct that the applicant be put back into possession of the property; or

(*b*) dismiss the application; or

(*c*) pass such order as in the circumstances of the case it deems fit.

Questions to be determined.

101. All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit.

Rules not applicable to transferee *pendente lite.*

102. Nothing in rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Explanation.—In this rule, "transfer" includes a transfer by operation of law.

Orders to be treated as decrees.

103. Where any application has been adjudicated upon under rule 98 or rule 100, the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.";

(*xxxv*) after rule 103, the following rules shall be inserted, namely:—

Order under rule 101 or rule 103 to be subject to the result of pending suit.

"104. Every order made under rule 101 or rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order under rule 101 or rule 103 is made has sought to establish a right which he claims to the present possession of the property.

Hearing of application.

105. (*1*) The Court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

(*2*) Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the Court may make an order that the application be dismissed.

(*3*) Where the applicant appears and the opposite party to whom the notice has been issued by the Court does not appear, the Court may hear the application *ex parte* and pass such order as it thinks fit.

Explanation.—An application referred to in sub-rule (*1*) includes a claim or objection made under rule 58.

Setting aside orders passed *ex parte* etc.,

106. (*1*) The applicant, against whom an order is made under sub-rule (*2*) of rule 105 or the opposite party against whom an order is passed *ex parte* under sub-rule (*3*) of that rule or under sub-rule (*1*) of rule 23, may apply to the Court to set aside the order, and if he satisfies the Court that there was sufficient cause for his non-appearance when the application was called on for hearing, the Court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

(*2*) No order shall be made on an application under sub-rule (*1*) unless notice of the application has been served on the other party.

(*3*) An application under sub-rule (*1*) shall be made within thirty days from the date of the order, or where in the case of an *ex parte* order the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order.".

Amendment of Order XXII.

16. In the First Schedule, in Order XXII,—

(*i*) in rule 4, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

"(*4*) Where,—

(*a*) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the prescribed period as provided in the Limitation Act, 1963, and the suit has, in consequence, abated, and 36 of 1963.

(*b*) the plaintiff applies after the expiry of the period specified therefor in the Limitation Act, 1963, for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act. 36 of 1963.

the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved.";

(*ii*) after rule 4, the following rule shall be inserted, namely:—

Procedure where there is no legal representative.

"4A. (*1*) If, in any suit, it shall appear to the Court that any party who has died during the pendency of the suit has no legal representative, the Court may, on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator-General, or an officer of the Court or such other person as it thinks fit to represent the estate of the deceased person for the purpose of the suit; and any judgment or order subsequently given or made in the suit shall bind the estate of the deceased person to the same extent as it would have been bound if a personal representative of the deceased person had been a party to the suit.

(*2*) Before making an order under this rule, the Court,—

(*a*) may require notice of the application for the order to be given to such (if any) of the persons having an interest in the estate of the deceased person as it thinks fit; and

(*b*) shall ascertain that the person proposed to be appointed to represent the estate of the deceased person is willing to be so appointed and has no interest adverse to that of the deceased person.";

(iii) to rule 5, the following proviso shall be added, namely:—

"Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.";

(*iv*) in rule 9, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Nothing in this rule shall be construed as barring, in any later suit, a defence based on the facts which constituted the cause of action in the suit which had abated or had been dismissed under this Order.";

(*v*) after rule 10, the following rule shall be inserted, namely:—

Duty of pleader to communicate to death of a party. Court

"10A. (*1*) Whenever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party.

(*2*) Where the pleader, on coming to know of such death, does not, within a reasonable time, inform the Court of such death, the Court may order the pleader to pay the costs occasioned by his failure to inform the Court of such death.".

Amendment of Order XXIII.

77. In the First Schedule, in Order XXIII,—

(*i*) for rule 1, the following rule shall be substituted, namely:—

Withdrawal of suit or abandonment of part of claim.

"1. (*1*) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(*2*) An application for leave under the proviso to sub-rule (*1*) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(*3*) Where the Court is satisfied,—

(*a*) that a suit must fail by reason of some formal defect, or

(*b*) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(*4*) Where the plaintiff—

(*a*) abandons any suit or part of claim under sub-rule (*1*), or

(*b*) withdraws from a suit or part of a claim without the permission referred to in sub-rule (*3*),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (*1*), or to withdraw, under sub-rule (*3*), any suit or part of a claim, without the consent of the other plaintiffs.";

(*ii*) after rule 1, the following rule shall be inserted, namely:—

When transposition of defendants as plaintiffs may be permitted.

"1A. Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I, the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.";

(*iii*) in rule 3,—

(*a*) after the words "lawful agreement or compromise", the words "in writing and signed by the parties" shall be inserted;

(*b*) for the words "so far as it relates to the suit", the words "so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit" shall be substituted;

(*c*) to rule 3, the following proviso shall be added, namely:—

"Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.";

(*d*) the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of this rule."; 9 of 1872.

(*iv*) after rule 3, the following rules shall be inserted, namely:—

Bar to suit.

'3A. No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

No agreement or compromise to be entered in a representative suit without leave of Court.

3B. (*1*) No agreement or compromise in a representative suit shall be entered into without the leave of the Court expressly recorded in the proceedings; and any such agreement or compromise entered into without the leave of the Court so recorded shall be void.

(*2*) Before granting such leave, the Court shall give notice in such manner as it may think fit to such persons as may appear to it to be interested in the suit.

Explanation.—In this rule, "representative suit" means,—

(*a*) a suit under section 91 or section 92,

(*b*) a suit under rule 8 of Order I,

(c) a suit in which the manager of an undivided Hindu family sues or is sued as representing the other members of the family,

(d) any other suit in which the decree passed may, by virtue of the provisions of this Code or of any other law for the time being in force, bind any person who is not named as party to the suit.'.

78. In the First Schedule, in Order XXVI,—

(i) to rule 1, the following proviso and *Explanation* shall be added, namely:—

"Provided that a commission for examination on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary so to do.

Amendment of Order XXVI.

Explanation.—The Court may, for the purpose of this rule, accept a certificate purporting to be signed by a registered medical practitioner as evidence of the sickness or infirmity of any person, without calling the medical practitioner as a witness.";

(ii) in rule 4,—

(a) in sub-rule (*1*), for the words "for the examination of", the words "for the examination on interrogatories or otherwise of—" shall be substituted;

(b) to sub-rule (*1*), the following provisos shall be added, namely:—

"Provided that where, under rule 19 of Order XVI, a person cannot be compelled to attend a Court in person, a commission shall be issued for his examination if his evidence is considered necessary in the interests of justice:

Provided further that a commission for examination of such person on interrogatories shall not be, issued unless the Court, for reasons to be recorded, thinks it necessary so to do.";

(iii) in rule 7, for the brackets and words "(subject to the provisions of the next following rule)", the brackets, words and figure "(subject to the provisions of rule 8)" shall be substituted;

(iv) after rule 10, the following heading and rules shall be inserted, namely:—

"Commissions for scientific investigation, performance of ministerial act and sale of movable property

Commission for scientific investigation

10A. (*1*) Where any question arising in a suit involves any scientific investigation which cannot, in the opinion of the Court, conveniently be conducted before the Court, the Court may, if it thinks it necessary or expedient in the interests of justice, so to do, issue a commission to such person as it thinks fit, directing him to inquire into such question and report thereon to the Court.

(*2*) The provisions of rule 10 of this Order shall, as far as may be, apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

Commission for performance of a ministerial act.

10B. (*1*) Where any question arising in a suit involves the performance of any ministerial act which cannot, in the opinion of the Court, be conveniently performed before the Court, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to perform that ministerial act and report thereon to the Court.

(*2*) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

Commission for the sale of movable property.

10C. (*1*) Where, in any suit, it becomes necessary to sell any movable property which is in the custody of the Court pending the determination of the suit and which cannot be conveniently preserved, the Court may, if, for reasons to be recorded, it is of opinion that it is necessary or expedient in the interests of justice so to do, issue a commission to such person as it thinks fit, directing him to conduct such sale and report thereon to the Court.

(*2*) The provisions of rule 10 of this Order shall apply in relation to a Commissioner appointed under this rule as they apply in relation to a Commissioner appointed under rule 9.

(*3*) Every such sale shall be held, as far as may be, in accordance with the procedure prescribed for the sale of movable property in execution of a decree.";

(*v*) after rule 16, the following rule shall be inserted, namely:—

Questions objected to before the Commissioner.

"16A. (*1*) Where any question put to a witness is objected to by a party or his pleader in proceedings before a Commissioner appointed under this Order, the Commissioner shall take down the question, the answer, the objections and the name of the party or, as the case may be, the pleader so objecting.

(*2*) No answer taken down under sub-rule (*1*) shall be read as evidence in the suit except by the order of the Court.";

(*vi*) to sub-rule (*1*) of rule 17, the following proviso shall be added, namely:—

"Provided that when the Commissioner is not a Judge of a Civil Court, he shall not be competent to impose penalties; but such penalties may be imposed on the application of such Commissioner by the Court by which the commission was issued.";

(*vii*) after rule 18, the following rule shall be inserted, namely:—

Application of Order to execution proceedings.

"18A. The provisions of this Order shall apply, so far as may be, to proceedings in execution of a decree or order.";

(*viii*) in rule 22, after the figures "16", the words, brackets, figures and letter "sub-rule (*1*) of rule 16A" shall be inserted.

79. In the First Schedule, in Order XXVII,— Amendment of Order XXVII.

(*i*) in rule 5, the words "but the time so allowed and the time so extended shall not exceed two months in the aggregate" shall be inserted at the end;

(*ii*) after rule 5, the following rules shall be inserted, namely:—

"5A. Where a suit is instituted against a public officer for damages or other relief in respect of any act alleged to have been done by him in his official capacity, the Government shall be joined as a party to the suit. Government to be joined as a party in a suit against a public officer.

5B. (*1*) In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit. Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement.

(*2*) If, in any such suit or proceeding, at any stage, it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit, to enable attempts to be made to effect such a settlement.

(*3*) The power conferred under sub-rule (*2*) is in addition to any other power of the Court to adjourn proceedings.".

80. In the First Schedule, in Order XXVIIA,— Amendment of Order XXVIIA.

(*i*) in the heading, after the words "INTERPRETATION OF THE CONSTITUTION", the words "OR AS TO THE VALIDITY OF ANY STATUTORY INSTRUMENT" shall be inserted;

(*ii*) after rule 1, the following rule shall be inserted, namely:—

"1A. In any suit in which it appears to the Court that any question as to the validity of any statutory instrument, not being a question of the nature mentioned in rule 1, is involved, the Court shall not proceed to determine that question except after giving notice— Procedure in suits involving validity of any statutory instrument.

(*a*) to the Government pleader, if the question concers the Government, or

(*b*) to the authority which issued the statutory instrument, if the question concerns an authority other than Government.";

(*iii*) after rule 2, the following rule shall be inserted, namely:—

Power of Court to add Government or other authority as a defendant in a suit relating to the validity of any statutory instrument.

"2A. The Court may, at any stage of the proceedings in any suit involving any such question as is referred to in rule 1A, order that the Government or other authority shall be added as a defendant if the Government pleader or the pleader appearing in the case for the authority which issued the instrument, as the case may be, whether upon receipt of notice under rule 1A or otherwise, applies for such addition, and the Court is satisfied that such addition is necessary or desirable for the satisfactory determination of the question.";

(*iv*) for rule 3, the following rule shall be substituted, namely:—

Costs.

"3. Where, under rule 2 or rule 2A, the Government or any other authority is added as a defendant in a suit, the Attorney-General, Advocate-General, or Government Pleader or Government or other authority shall not be entitled to, or liable for, costs in the Court which ordered the addition unless the Court, having regard to all the circumstances of the case for any special reason, otherwise orders.";

(*v*) after rule 4, the following *Explanation* shall be inserted, namely:—

'*Explanation*.—In this Order, "statutory instrument" means a rule, notification, bye-law, order, scheme or form made under any enactment.'.

Amendment of Order XXX.

81. In the First Schedule, in Order XXX,—

(*i*) in rule 2, for the proviso below sub-rule (*3*), the following proviso shall be substituted, namely:—

"Provided that all proceedings shall nevertheless continue in the name of the firm, but the name of the partners disclosed in the manner specified in sub-rule (*1*) shall be entered in the decree.";

(*ii*) for rule 8, the following rule shall be substituted, namely:—

Appearance under protest.

"8. (*1*) Any person served with summons as a partner under rule 3 may enter an appearance under protest, denying that he was a partner at any material time.

(*2*) On such appearance being made, either the plaintiff or the person entering the appearance may, at any time before the date fixed for hearing and final disposal of the suit, apply to the Court for determining whether that person was a partner of the firm and liable as such.

(*3*) If, on such application, the Court holds that he was a partner at the material time, that shall not preclude that person

from filing a defence denying the liability of the firm in respect of the claim against the defendant.

(4) If the Court, however, holds that such person was not a partner of the firm and was not liable as such, that shall not preclude the plaintiff from otherwise serving a summons on the firm and proceeding with the suit; but in that event, the plaintiff shall be precluded from alleging the liability of that person as a partner of the firm in execution of any decree that may be passed against the firm.";

(*iii*) for rule 10, the following rule shall be substituted, namely:—

"10. Any person carrying on business in a name or style other than his own name, or a Hindu undivided family carrying on business under any name, may be sued in such name or style as if it were a firm name, and, in so far as the nature of such case permits, all rules under this Order shall apply.". Suit against person carrying on business in name other than his own.

82. In the First Schedule, in Order XXXII,— Amendment of Order XXXII

(*i*) in rule 1, the following *Explanation* shall be inserted at the end, namely:—

'*Explanation.*—In this Order, "minor" means a person who has not attained his majority within the meaning of section 3 of the Indian Majority Act, 1875, where the suit relates to any of the matters mentioned in clauses (*a*) and (*b*) of section 2 of that Act or to any other matter.';

9 of 1875.

(*ii*) after rule 2, the following rule shall be inserted, namely:—

"2A. (*1*) Where a suit has been instituted on behalf of the minor by his next friend, the Court may, at any stage of the suit either of its own motion or on the application of any defendant, and for reasons to be recorded, order the next friend to give security for the payment of all costs incurred or likely to be incurred by the defendant. Security to be furnished by next friend when so ordered.

(*2*) Where such a suit is instituted by an indigent person, the security shall include the Court-fees payable to the Government.

(*3*) The provisions of rule 2 of Order XXV shall, so far as may be, apply to a suit where the Court makes an order under this rule directing security to be furnished.";

(*iii*) in rule 3,—

(*a*) in sub-rule (*4*),—

(*i*) the words "to the minor and" shall be omitted;

(*ii*) for the words "upon notice to the father or other natural guardian", the words "upon notice to the father or where there is no father, to the mother, or where there is no father or mother, to other natural guardian" shall be substituted;

(*iii*) for the words "no father or other natural guardian", the words "no father, mother or other natural guardian" shall be substituted;

(*b*) after sub-rule (4), the following sub-rule shall be inserted, namely:—

"(*4A*) The Court may, in any case, if it thinks fit, issue notice under sub-rule (4) to the minor also.";

(*iv*) after rule 3, the following rule shall be inserted, namely:—

Decree against minor not to be set aside unless prejudice has been caused to his interests.

"3A. (1) No decree passed against a minor shall be set aside merely on the ground that the next friend or guardian for the suit of the minor had an interest in the subject-matter of the suit adverse to that of the minor; but the fact that by reason of such adverse interest of the next friend or guardian for the suit, prejudice has been caused to the interests of the minor, shall be a ground for setting aside the decree.

(2) Nothing in this rule shall preclude the minor from obtaining any relief available under any law by reason of the misconduct or gross negligence on the part of the next friend or guardian for the suit resulting in prejudice to the interests of the minor.";

(*v*) in rule 4,—

(*a*) in sub-rule (3), after the word "consent", the words "in writing" shall be inserted;

(*b*) in sub-rule (4), after the words "any fund in Court in which the minor is interested", the words "or out of the property of the minor" shall be inserted;

(*vi*) in rule 6, to sub-rule (2), the following proviso shall be added, namely:—

"Provided that the Court may, for reasons to be recorded, dispense with such security while granting leave to the next friend or guardian for the suit to receive money or other movable property under a decree or order, where such next friend or guardian—

(*a*) is the manager of a Hindu undivided family and the decree or order relates to the property or business of the family; or

(*b*) is the parent of the minor.";

(*vii*) in rule 7, after sub-rule (1), the following sub-rule shall be inserted, namely:—

"(*1A*) An application for leave under sub-rule (1) shall be accompanied by an affidavit of the next friend or the guardian for the suit, as the case may be, and also, if the minor is represented by a pleader, by the certificate of the pleader, to the effect that the agreement or compromise proposed is, in his opinion, for the benefit of the minor.";

(*viii*) for rule 15, the following rule shall be substituted, namely:—

"15. Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on inquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued.";

Rules 1 to 14 (except rule 2A) to apply to persons of unsound mind.

(*ix*) for rule 16, the following rule shall be substituted, namely:—

"16. (*1*) Nothing contained in this Order shall apply to the Ruler of a foreign State suing or being sued in the names of his State, or being sued by the direction of the Central Government in the name of an agent or in any other name.

Savings.

(2) Nothing contained in this Order shall be construed as affecting or in any way derogating from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.".

83. In the First Schedule, after Order XXXII, the following Order shall be inserted, namely:—

Insertion of new Order XXXIIA.

'ORDER XXXIIA

SUITS RELATING TO MATTERS CONCERNING THE FAMILY

1. (*1*) The provisions of this Order shall apply to suits or proceedings relating to matters concerning the family.

Application of the Order.

(2) In particular, and without prejudice to the generality of the provisions of sub-rule (*1*), the provisions of this Order shall apply to the following suits or proceedings, namely:—

(*a*) a suit or proceeding for matrimonial relief, including a suit or proceeding for declaration as to the validity of a marriage or as to the matrimonial status of any person;

(*b*) a suit or proceeding for a declaration as to the legitimacy of any person;

(*c*) a suit or proceeding in relation to the guardianship of the person or the custody of any minor or other person under a disability;

(*b*) a suit or proceeding for a declaration as to the legitimacy

(*e*) a suit or proceeding as to the validity or effect of an adoption;

(*f*) a suit or proceeding relating to wills, intestacy and succession;

(*g*) a suit or proceeding relating to any other matter in respect of which the parties are subject to their Personal Law.

(3) So much of this Order as relates to a matter provided for by a special law in respect of any suit or proceeding shall not apply to that suit or proceeding.

Proceedings to be held in *camera*.

2. In every suit or proceeding to which this Order applies, the proceedings may be held *in camera* if the Court so desires and shall be so held if either party so desires.

Duty of Court to make efforts for settlement.

3. (*1*) In every suit or proceeding to which this Order applies, an endeavour shall be made by the Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.

(*2*) If, in any such suit or proceeding, at any stage it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the proceeding for such period as it thinks fit to enable attempts to be made to effect such a settlement.

(*3*) The power conferred by sub-rule (*2*) shall be in addition to, and not in derogation of, any other power of the Court to adjourn proceedings.

Assistance of welfare expert.

4. In every suit or proceeding to which this Order applies, it shall be open to the Court to secure the services of such person (preferably a woman where available), whether related to the parties or not, including a person professionally engaged in promoting the welfare of the family as the Court may think fit, for the purpose of assisting the Court in discharging the functions imposed by rule 3 of this Order.

Duty to inquire into facts.

5. In every suit or proceeding to which this Order applies, it shall be the duty of the Court to inquire, so far it reasonably can, into the facts alleged by the plaintiff and into any facts alleged by the defendant.

"Family" —meaning of.

6. For the purposes of this Order, each of the following shall be treated as constituting a family, namely:—

(*a*) (*i*) a man and his wife living together,

(*ii*) any child or children, being issue of theirs; or of such man or such wife,

(*iii*) any child or children being maintained by such man and wife;

(*b*) a man not having a wife or not living together with his wife, any child or children, being issue of his, and any child or children being maintained by him;

(*c*) a woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her;

(*d*) a man or woman and his or her brother, sister, ancestor or lineal descendant living with him or her; and

(*e*) any combination of one or more of the groups specified in clause (*a*), clause (*b*), clause (*c*) or clause (*d*) of this rule.'.

84. In the First Schedule, in Order XXXIII,— Amendment of Order XXXIII.

(*i*) for the heading, the following shall be substituted, namely:—

"SUITS BY INDIGENT PERSONS";

(*ii*) in the Order, for the word "pauper", wherever it occurs, the words "indigent person", shall, with such grammatical variations or cognate expressions as may be necessary, be substituted;

(*iii*) in rule 1, for the *Explanation*, the following *Explanations* shall be substituted, namely:—

"*Explanation I.*—A person is an indigent person,—

(*a*) if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fee prescribed by law for the plaint in such suit, or

(*b*) where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than the property exempt from attachment in execution of a decree, and the subject-matter of the suit.

Explanation II.—Any property which is acquired by a person after the presentation of his application for permission to sue as an indigent person, and before the decision of the application, shall be taken into account in considering the question whether or not the applicant is an indigent person.

Explanation III.—Where the plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.";

(*iv*) after rule 1, the following rule shall be inserted, namely:—

"1A. Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer of the Court, unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question."; Inquiry into the means of an indigent person.

(*v*) in rule 5,—

(*a*) to clause (*c*), the following proviso shall be added, namely:—

"Provided that no application shall be rejected if, even after the value of the property disposed of by the applicant is taken into account, the applicant would be entitled to sue as an indigent person.";

(*b*) after clause (*e*), the following clauses shall be inserted, namely:—

"(*f*) where the allegations made by the applicant in the application show that the suit would be barred by any law for the time being in force, or

(*g*) where any other person has entered into an agreement with him to finance the litigation.";

(*vi*) in rule 7,—

(*a*) in sub-rule (*1*), for the words "a memorandum of the substance of their evidence", the words "a full record of their evidence" shall be substituted;

(*b*) after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) The examination of the witnesses under sub-rule (*1*) shall be confined to the matters specified in clause (*b*), clause (*c*) and clause (*e*) of rule 5 but the examination of the applicant or his agent may relate to any of the matters specified in rule 5.";

(*c*) in sub-rule (*2*), for the words "as herein provided", the words and figure "under rule 6 or under this rule" shall be substituted;

(*vii*) in rule 8, for the brackets and words "(other than fees payable for service of process)", the words "or fees payable for service of process" shall be substituted;

(*viii*) after rule 9, the following rule shall be inserted, namely:—

Court to assign a pleader to an unrepresented indigent person.

"9A. (*1*) Where a person, who is permitted to sue as an indigent person, is not represented by a pleader, the Court may, if the circumstances of the case so require, assign a pleader to him.

(*2*) The High Court may, with the previous approval of the State Government, make rules providing for—

(*a*) the mode of selecting pleaders to be assigned under sub-rule (*1*);

(*b*) the facilities to be provided to such pleaders by the Court;

(*c*) any other matter which is required to be or may be provided by the rules for giving effect to the provisions of sub-rule (*1*).";

(*ix*) in rule 11, in clause (*a*), after the words "such service", the words "or to present copies of the plaint or concise statement" shall be inserted;

(*x*) rule 15 shall be re-numbered as sub-rule (*1*) of that rule, and—

(*a*) in sub-rule (*1*) as so re-numbered,—

(*i*) for the words "applicant shall be at liberty", the words "applicant shall, subject to the provisions of sub-rule (*2*), be at liberty" shall be substituted;

(*ii*) the words beginning with "provided that" and ending with "leave to sue as a pauper" shall be omitted;

(*b*) after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) No suit shall be entertained unless the applicant pays the costs (if any) incurred by the State Government and

by the opposite party in opposing the application for leave to sue as an indigent person; and where such costs are not paid at the time of the institution of the suit or within such period thereafter as the Court may allow, the plaint shall be rejected.";

(*xi*) after rule 15, the following rule shall be inserted, namely: —

Grant of time for payment of Court-fee.

"15A. Nothing contained in rule 5, rule 7 or rule 15 shall prevent a Court, while rejecting an application under rule 5 or refusing an application under rule 7, from granting time to the applicant to pay the requisite court-fee within such time as may be fixed by the Court or extended by it from time to time; and upon such payment and on payment of the costs referred to in sub-rule (*2*) of rule 15 within that time, the suit shall be deemed to have been instituted on the date on which the application for permission to sue as an indigent person was presented.";

(*xii*) after rule 16, the following rule shall be inserted, namely:—

Defence by an indigent person.

"17. Any defendant, who desires to plead a set-off or counter-claim, may be allowed to set up such claim as an indigent person, and the rules contained in this Order shall, so far as may be, apply to him as if he were a plaintiff and his written statement were a plaint.".

Amendment of Order XXXIV.

85. In the First Schedule, in Order XXXIV,—

(*i*) in this Order,—

(*a*) for the words "preliminary decree", wherever they occur, the word "decree" shall be substituted;

(*b*) for the word "ordering", wherever it occurs, the word "directing" shall be substituted;

(*ii*) in rule 2,—

(*a*) in sub-rule (*1*), for the words "for a final decree", the words "for an order" shall be substituted;

(*b*) in sub-rule (*2*), for the words "a final decree", the words "an order" shall be substituted;

(*iii*) in rule 3,—

(*a*) in the marginal heading, for the words "final decree" the words "order in execution" shall be substituted;

(*b*) in sub-rule (*1*), in the opening words,—

(*i*) for the words "a final decree", the words "an order" shall be substituted;

(*ii*) for the words "pass a final decree", the words "in execution pass an order" shall be substituted;

(*c*) in sub-rule (*2*), for the words "pass a final decree", the words "and after notice to all parties, in execution, pass an order" shall be substituted;

(*d*) in sub-rule (*3*), for the words "a final decree", the words "an order" shall be substituted;

(*iv*) in rule 4,—

(*a*) in sub-rule (*1*), for the words "for a final decree", the words "for an order" shall be substituted;

(*b*) in sub-rule (*2*), for the words "a final decree", the words "an order" shall be substituted;

(*v*) in rule 5,—

(*a*) in the marginal heading, for the words "final decree", the words "order in execution" shall be substituted;

(*b*) in sub-rule (*1*),—

(*i*) in the opening words, for the words "a final decree", the words "an order" shall be substituted;

(*ii*) for the words "pass a final decree or, if such decree has been passed, an order", the words "in execution, pass an order" shall be substituted;

(*iii*) in clause (*b*), for the words "said decree", the word "decree" shall be substituted;

(*c*) in sub-rule (*2*), for the words "a decree", the words "an order" shall be substituted;

(*d*) in sub-rule (*3*), for the words "in this behalf, pass a final decree", the words "and after notice to all parties, in execution, pass an order" shall be substituted;

(*vi*) in rule 6,—

(*a*) for the words "the last preceding rule", the word and figure "rule 5" shall be substituted;

(*b*) for the words "a decree for such balance", the words "an order for such balance in execution" shall be substituted;

(*vii*) in rule 7,—

(*a*) in sub-rule (*1*),—

(*i*) in clause (*a*), for the words "such decree", the words "the decree" shall be substituted;

(*ii*) in sub-clause (*ii*) of clause (*c*), for the words "for a final decree", the words "for an order in execution" shall be substituted;

(*b*) in sub-rule (*2*), for the words "a final decree", the words "an order" shall be substituted;

(*viii*) in rule 8,—

(*a*) in the marginal heading, for the words "final decree", the words "order in execution" shall be substituted;

(*b*) in sub-rule (*1*),—

(*i*) in the opening words, for the words "before a final decree", the words "before an order" shall be substituted;

(*ii*) for the words "in pursuance of a final decree", the words "in pursuance of an order" shall be substituted;

(*iii*) for the words "pass a final decree, or, if such decree has been passed, an order", the words "pass a decree

or, if a decree has been passed, an order in execution" shall be substituted;

(*iv*) in clause (*b*), for the words "said decree", the word "decree" shall be substituted;

(*c*) in sub-rule (*2*), for the words "a decree", the words "an order" shall be substituted;

(*d*) in sub-rule (*3*),—

(*a*) in the opening paragraph, for the words "in this behalf", the words "in this behalf in execution, and after notice to all parties" shall be substituted;

(*b*) in clause (*a*), for the words "a final decree", the words "an order" shall be substituted;

(*c*) in clause (*b*), for the words "a final decree", the words "an order" shall be substituted;

(*ix*) in rule 8A,—

(*a*) for the words "the last preceding rule", the word and figure "rule 8" shall be substituted;

(*b*) for the words "on application by him", the words "on application by him in execution" shall be substituted;

(*c*) for the words "pass a decree", the words "pass an order" shall be substituted;

(*x*) in rule 9,—

(*a*) in the marginal heading, for the word "decree", the word "order" shall be substituted;

(*b*) for the words "shall pass a decree", the words "shall pass an order" shall be substituted;

(*xi*) to rule 10, the following proviso shall be added, namely:—

"Provided that where the mortgagor, before or at the time of the institution of the suit, tenders or deposits the amount due on the mortgage, or such amount as is not substantially deficient in the opinion of the Court, he shall not be ordered to pay the costs of the suit to the mortgagee and the mortgagor shall be entitled to recover his own costs of the suit from the mortgagee, unless the Court, for reasons to be recorded, otherwise directs.";

(*xii*) after rule 10, the following rule shall be inserted, namely:—

Power of Court to direct mortgagee to pay mesne profits.

"10A. Where in a suit for foreclosure, the mortgagor has, before or at the time of the institution of the suit, tendered or deposited the sum due on the mortgage, or such sum as is not substantially deficient in the opinion of the Court, the Court shall direct the mortgagee to pay to the mortgagor mesne profits for the period beginning with the institution of the suit.";

(*xiii*) rule 15 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where a decree orders payment of money and charges it on immovable property on default of payment, the amount may be realised by sale of that property in execution of that decree.".

Amendment of Order XXXVI.

86. In the First Schedule, in Order XXXVI,—

(*i*) in rule 3,—

(*a*) in sub-rule (*1*), after the words "may be filed", the words "with an application" shall be inserted;

(*b*) in sub-rule (*2*),—

(*i*) for the words "The agreement", the words "The application" shall be substituted;

(*ii*) for the words "it was presented", the words "the application was presented" shall be substituted;

(*ii*) after rule 5, the following rule shall be inserted, namely:—

No appeal from a decree passed under rule 5.

"6. No appeal shall lie from a decree passed under rule 5.".

Amendment of Order XXXVII.

87. In the First Schedule, in Order XXXVII,—

(*i*) in the heading, the words "ON NEGOTIABLE INSTRUMENTS" shall be omitted;

(*ii*) for rule 1, the following rule shall be substituted, namely:—

Courts and classes of suits to which the Order is to apply.

"1. (*1*) This Order shall apply to the following Courts, namely:—

(*a*) High Courts, City Civil Courts and Courts of Small Causes; and

(*b*) other Courts:

Provided that in respect of the other Courts referred to in clause (*b*), the High Court may, by notification in the Official

Gazette, restrict the operation of this Order only to such categories of suits as it deems proper, and may also, from time to time, as the circumstances of the case may require, by subsequent notification in the Official Gazette, further restrict, enlarge or vary, the categories of suits to be brought under the operation of this Order as it deems proper.

(2) Subject to the provisions of sub-rule (1), the Order applies to the following classes of suits, namely:—

(*a*) suits upon bills of exchange, hundies and promissory notes;

(*b*) suits in which the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising,—

(*i*) on a written contract; or

(*ii*) on an enactment where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or

(*iii*) on a guarantee, where the claim against the principal is in respect of a debt or liquidated demand only.";

(*iii*) for rule 2, the following rule shall be substituted, namely:—

Institution of summary suits.

'2. (*1*) A suit, to which this Order applies, may, if the plaintiff desires to proceed hereunder, be instituted by presenting a plaint which shall contain,—

(*a*) a specific averment to the effect that the suit is filed under this Order;

(*b*) that no relief, which does not fall within the ambit of this rule, has been claimed in the plaint; and

(*c*) the following inscription, immediately below the number of the suit in the title of the suit, namely:—

"(Under Order XXXVII of the Code of Civil Procedure, 1908)";

(*2*) The summons of the suit shall be in Form No. 4 in Appendix B or in such other Form as may, from time to time, be prescribed.

(*3*) The defendant shall not defend the suit referred to in sub-rule (*1*) unless he enters an appearance and obtains the leave of the Court or Judge to defend the suit and in default of his entering an appearance and of his obtaining such leave to defend, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for any sum, not exceeding the sum mentioned in the summons, together with interest at the rate specified, if any, up to the date of the decree, and such sum for costs as may be determined by the High Court from time to time by rules made in that behalf and such decree may be executed forthwith.';

(*iv*) for rule 3, the following rule shall be substituted, namely:—

Procedure for the appearance of defendant.

"3. (*1*) In a suit to which this Order applies, the plaintiff shall, together with the summons under rule 2, serve on the defendant a copy of the plaint and annexures thereto and the defendant may, at any time within ten days of such service, enter an appearance either in person or by pleader and, in either case, he shall file in Court an address for service of notices on him.

(*2*) Unless otherwise ordered, all summonses, notices and other judicial processes, required to be served on the defendant, shall be deemed to have been duly served on him if they are left at the address given by him for such service.

(*3*) On the day of entering the appearance, notice of such appearance shall be given by the defendant to the plaintiff's pleader, or, if the plaintiff sues in person, to the plaintiff himself, either by notice delivered at or sent by a pre-paid letter directed to the address of the plaintiff's pleader or of the plaintiff, as the case may be.

(*4*) If the defendant enters an appearance, the plaintiff shall thereafter serve on the defendant a summons for judgment in Form No. 4A in Appendix B or such other form as may be prescribed from time to time, returnable not less than ten days from the date of service supported by an affidavit verifying the cause of action and the amount claimed and stating that in his belief there is no defence to the suit.

(*5*) The defendant may, at any time within ten days from the service of such summons for judgment, by affidavit or otherwise disclosing such facts as may be deemed sufficient to entitle him to defend, apply on such summons for leave to defend such suit, and leave to defend may be granted to him unconditionally or upon such terms as may appear to the Court or Judge to be just.

(*6*) At the hearing of such summons for judgment,—

(*a*) if the defendant has not applied for leave to defend, or if such application has been made and is refused, the plaintiff shall be entitled to judgment forthwith; or

(*b*) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.

(*7*) The Court or Judge may, for sufficient cause shown by the defendant, excuse the delay of the defendant in entering an appearance or in applying for leave to defend the suit.".

88. In the First Schedule, in Order XXXVIII,— Amendment of Order XXXVIII.

(*i*) in clause (*a*) of rule 1,—

(*a*) in sub-clause (*i*), after the words "left the local limits", the words "without any lawful excuse" shall be inserted;

(*b*) in sub-clause (*ii*), for the words "leave the local limits", the words "without any lawful excuse leave the local limits" shall be substituted;

(*ii*) in rule 5, after sub-rule (*3*), the following sub-rule shall be inserted, namely:—

"(*4*) Any attachment made under this rule shall be void if it is not made in the manner specified in this rule.";

(*iii*) for rule 8, the following rule shall be substituted, namely:—

"8. Where any claim is preferred to property attached before judgment, such claim shall be adjudicated upon in the manner hereinbefore provided for the adjudication of claims to property attached in execution of a decree for the payment of money."; Adjudication of claim to property attached before judgment.

(*iv*) after rule 11, the following rule shall be inserted, namely:—

"11A. (*1*) The provisions of this Code applicable to an attachment made in execution of a decree shall, so far as may be, apply to an attachment made before judgment which continues after the judgment by virtue of the provisions of rule 11. Provisions applicable to attachment.

(*2*) An attachment made before judgment in a suit which is dismissed for default shall not become revived merely by reason of the fact that the order for the dismissal of the suit for default has been set aside and the suit has been restored.".

89. In the First Schedule, in Order XXXIX,— Amendment of Order XXXIX.

(*i*) in rule 1,—

(*a*) in clause (*b*), for the word "defraud", the word "defrauding" shall be substituted;

(*b*) after clause (*b*), the following clause shall be inserted, namely:—

"(*c*) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit,";

(*c*) after the words "sale, removal or disposition of the property", the words "or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit" shall be inserted;

(*ii*) in rule 2, sub-rules (*3*) and (*4*) shall be omitted;

(*iii*) after rule 2, the following rule shall be inserted, namely:—

"2A. (*1*) In case of disobedience to any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, Consequence of disobedience or

breach of injunction.

or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding six months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.";

(*iv*) to rule 3, the following proviso shall be added, namely:—

"Provided that where an injunction is granted without notice to the opposite party, the Court shall, before granting such injunction, require the party praying for the injunction to file an affidavit stating that a copy of the application for injunction has been delivered to the opposite party or, where such delivery is not practicable, a copy of the application together with the documents and affidavit on which the applicant relies and a copy of the pleadings has been sent to the opposite party by registered post.";

(*v*) after rule 3, the following rule shall be inserted, namely:—

Duration of an *ex parte* injunction.

"3A. Where an injunction has been granted without giving notice to the opposite party,—

(*a*) such injunction shall not ordinarily remain in force for a period exceeding thirty days from the date on which it was granted and the duration of the period of operation of such injunction shall not be extended unless the Court, for reasons to be recorded, is of opinion that such extension is absolutely necessary and, where such extension is made, the total period of operation of the injunction shall not exceed, except with the consent of the opposite party, forty-five days from the date on which it was granted;

(*b*) the application for such injunction shall, as far as practicable, be heard and disposed of within thirty days from the date on which such injunction was granted.";

(*vi*) to rule 4, the following provisos shall be added, namely:—

"Provided that if in an application for temporary injunction or in any affidavit supporting such application, a party has knowingly made a false or misleading statement in relation to a material particular and the injunction was granted without giving notice to the opposite party, the Court shall vacate the injunction unless, for reasons to be recorded, it considers that it is not necessary so to do in the interests of justice:

Provided further that where an order for injunction has been passed after giving to a party an opportunity of being heard, the order shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or setting aside has been necessitated by a change in the

circumstances, or unless the Court is satisfied that the order has caused undue hardship to that party.";

(*vii*) in rule 8,—

(*a*) in sub-rule (*1*), the words "after notice to the defendant" shall be omitted;

(*b*) in sub-rule (*2*), the words "after notice to the plaintiff" shall be omitted;

(*c*) after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

"(*3*) Before making an order under rule 6 or rule 7 on an application made for the purpose, the Court shall, except where it appears that the object of making such order would be defeated by the delay, direct notice thereof to be given to the opposite party.".

Amendment of Order XLI.

90. In the First Schedule, in Order XLI,—

(*i*) in rule 1,—

(*a*) to sub-rule (*1*), the following proviso shall be added, namely:—

"Provided that where two or more suits have been tried together and a common judgment has been delivered therefor and two or more appeals are filed against any decree covered by that judgment, whether by the same appellant or by different appellants, the Appellate Court may dispense with the filing of more than one copy of the judgment.";

(*b*) after sub-rule (*2*), the following sub-rule shall be inserted, namely:—

Deposit of amount or furnishing of security in certain cases.

"(*3*) Where the appeal is against an order made in execution of a decree for payment of money, the appellant shall, within such time as the Appellate Court may allow, deposit the amount disputed in the appeal or furnish such security in respect thereof as the Court may think fit.";

(*ii*) in rule 3, after sub-rule (*1*), the following sub-rule shall be inserted, namely:—

"(*1A*) Where the appellant fails to make the deposit or furnish security specified in sub-rule (*3*) of rule 1, the Court shall reject the memorandum of appeal.";

(*iii*) after rule 3, the following rule shall be inserted, namely:—

Application for condonation of delay.

"3A. (*1*) When an appeal is presented after the period of limitation prescribed therefor, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

(2) If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice thereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.";

(*iv*) in rule 5,—

(*a*) in sub-rule (*1*), the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by a pleader, based on his personal knowledge, stating that an order for the stay of execution of the decree has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.";

(*b*) in sub-rule (*4*), for the words "Notwithstanding anything contained in sub-rule (*3*),", the words "Subject to the provision of sub-rule (*3*)," shall be substituted;

(*v*) in rule 11, after sub-rule (*3*), the following sub-rules shall be inserted, namely:—

"(*4*) Where an appeal by a judgment-debtor is admitted under this rule against a determination of any such question as is referred to in section 47, in relation to a decree or order for the payment of money, the admission of the appeal shall be conditional on the appellant furnishing security for the due performance of such decree or order as may ultimately be binding upon him; and if the appellant does not furnish such security within such time as may be fixed by the Court, the appeal shall be dismissed.

(*5*) Where an Appellate Court, not being the High Court, dismisses an appeal under sub-rule (*1*), it shall deliver a judgment, recording in brief its grounds for doing so, and a decree shall be drawn up in accordance with the judgment.";

(*vi*) after rule 12, the following rule shall be inserted, namely:—

Power of Court to admit appeal in part or on specific grounds only.

"12A. The Court may, at the time of admission of an appeal, direct that the appeal be admitted in part only or on specific grounds only and where such an order is passed, it shall not be open to the appellant to argue the appeal on any other part or to urge any other ground of appeal, as the case may be, without the leave of the Court.";

(*vii*) in rule 14, after sub-rule (*2*), the following sub-rules shall be inserted, namely:—

"(*3*) The notice to be served on the respondent shall be accompanied by a copy of the memorandum of appeal.

(4) Notwithstanding anything to the contrary contained in sub-rule (*1*), it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the Appellate Court, unless he has appeared and filed an address for the service in the Court of first instance or has appeared in the appeal.

(5) Nothing in sub-rule (4) shall bar the respondent referred to in the appeal from defending it.";

(*viii*) in rule 17, in sub-rule (*1*), the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—Nothing in this sub-rule shall be construed as empowering the Court to dismiss the appeal on the merits.";

(*ix*) in rule 18, after the words "defray the cost of serving the notice", the words "or, if the notice is returned unserved, and it is found that the notice to the respondent has not been issued in consequence of the failure of the appellant to deposit, within any subsequent period fixed, the sum required to defray the cost of any further attempt to serve the notice," shall be inserted;

(*x*) rule 20 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) No respondent shall be added under this rule, after the expiry of the period of limitation for appeal, unless the Court, for reasons to be recorded, allows that to be done, on such terms as to costs as it thinks fit.";

(*xi*) in rule 22,—

(*a*) in sub-rule (*1*), for the words "on any of the grounds decided against him in the Court below, but take any cross-objection", the words "by stating that the decision in respect of any ground decided against him in the Court below ought to have been decided in his favour; but also take any cross-objection" shall be substituted;

(*b*) in sub-rule (*1*), the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—A respondent aggrieved by a finding of a Court which is incorporated in a decree may, under this rule, file cross-objection in respect of the decree in so far as it relates to that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, wholly or in part, is in favour of that respondent.";

(*xii*) after rule 23, the following rule shall be inserted, namely:—

"23A. Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is con- Remand in other cases.

sidered necessary, the Appellate Court shall have the same powers as it has under rule 23.";

(*xiii*) in rule 25, after the words "and the reasons therefor", the words "within such time as may be fixed by the Appellate Court or extended by it from time to time" shall be inserted;

(*xiv*) after rule 26, the following rule shall be inserted, namely:—

Order of remand to mention date of next hearing.

"26A. Where the Appellate Court remands a case under rule 23 or rule 23A, or frames issues and refers them for trial under rule 25, it shall fix a date for the appearance of the parties before the Court from whose decree the appeal was preferred for the purpose of receiving the directions of that Court as to further proceedings in the suit.";

(*xv*) in rule 27, in sub-rule (*1*), after clause (*a*), the following clause shall be inserted, namely:—

"(*aa*) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not be produced by him at the time when the decree appealed against was passed, or";

(*xvi*) rule 30 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*) as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Where a written judgment is to be pronounced, it shall be sufficient if the points for determination, the decision thereon and the final order passed in the appeal are read out and it shall not be necessary for the Court to read out the whole judgment, but a copy of the whole judgment shall be made available for the perusal of the parties or their pleaders immediately after the judgment is pronounced.";

(*xvii*) in rule 33, after the words "may not have filed any appeal or objection", the words "and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees" shall be inserted.

Amendment of Order XLII.

91. In the First Schedule, in Order XLII, after rule 1, the following rules shall be inserted, namely:—

Court to record reasons for the admission of a second appeal.

"2. (*1*) Where an appeal from an appellate decree or order is admitted, the Court admitting it shall record its reasons for so doing.

(*2*) It shall not be necessary for the Court to record reasons for not admitting an appeal from an appellate decree or order.

Application of rule 14 of Order XLI.

3. References in sub-rule (*4*) of rule 14 of Order XLI to the Court of first instance shall, in the case of an appeal from an appellate decree or order, be construed as a reference to the Court to which the appeal was preferred from the original decree or order.".

Amendment of Order XLIII.

92. In the First Schedule, in Order XLIII,—

(*i*) in rule 1,—

(*a*) in clause (*a*), the words, figures and letter "except where the procedure specified in rule 10A of Order VII has been followed" shall be inserted at the end;

(*b*) clauses (*b*), (*e*), (*g*), (*h*), (*m*), (*o*) and (*v*) shall be omitted;

(*c*) after clause (*j*), the following clause shall be inserted, namely:—

"(*ja*) an order rejecting an application made under sub-rule (*1*) of rule 106 of Order XXI, provided that an order on the original application, that is to say, the application referred to in sub-rule (*1*) of rule 105 of that order, is appealable;";

(*d*) after clause (*n*), the following clause shall be inserted, namely:—

"(*na*) an order under rule 5 or rule 7 of Order XXXIII rejecting an application for permission to sue as an indigent person;";

(*e*) in clause (*r*), after the word and figure "rule 2", the word, figure and letter ", rule 2A" shall be inserted;

(*f*) in clause (*u*), after the figures "23", the words, figures and letter "or rule 23A" shall be inserted;

(*ii*) after rule 1, the following rule shall be inserted, namely:—

Right to challenge non-appealable orders in appeal against decrees.

"1A. (*1*) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(*2*) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise ought not to have been recorded.".

Amendment of Order XLIV.

93. In the First Schedule, in Order XLIV,—

(*i*) for the heading, the following heading shall be substituted, namely:—

"APPEALS BY INDIGENT PERSONS";

(*ii*) in rule 1,—

(*a*) in the marginal heading, for the words "as pauper", the words "as an indigent person" shall be substituted;

(*b*) in sub-rule (*1*), for the word "pauper" or "paupers", the words "indigent person" or "indigent persons" shall, as the case may be, be substituted;

(*c*) sub-rule (*2*) shall be omitted;

(*iii*) for rule 2, the following rules shall be substituted, namely:—

Grant of time for payment of Court-fee.

"2. Where an application is rejected under rule 1, the Court may, while rejecting the application, allow the applicant to pay the requisite Court-fee, within such time as may be fixed by the Court or extended by it from time to time; and upon such payment, the memorandum of appeal in respect of which such fee is payable shall have the same force and effect as if such fee had been paid in the first instance.

Inquiry as to whether applicant is an indigent person.

3. (*1*) Where an applicant, referred to in rule 1, was allowed to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in respect of the question whether or not he is an indigent person shall be necessary if the applicant has made an affidavit stating that he has not ceased to be an indigent person since the date of the decree appealed from; but if the Government pleader or the respondent disputes the truth of the statement made in such affidavit, an inquiry into the question aforesaid shall be held by the Appellate Court, or, under the orders of the Appellate Court, by an officer of that Court.

(*2*) *Where* the applicant, referred to in rule 1, is alleged to have become an indigent person since the date of the decree appealed from, the inquiry into the question whether or not he is an indigent person shall be made by the Appellate Court or, under the orders of the Appellate Court, by an officer of that Court, unless the Appellate Court considers it necessary in the circumstances of the case that the inquiry should be held by the Court from whose decision the appeal is preferred.".

Amendment of Order XLV.

94. In the First Schedule, in Order XLV, rule 2 shall be re-numbered as sub-rule (*1*) of that rule, and after sub-rule (*1*), as so re-numbered, the following sub-rule shall be inserted, namely:—

"(*2*) Every petition under sub-rule (*1*) shall be heard as expeditiously as possible and endeavour shall be made to conclude the disposal of the petition within sixty days from the date on which the petition is presented to the Court under sub-rule (*1*).".

Amendment of Order XLVII.

95. In the First Schedule, in Order XLVII,—

(*i*) in rule 1, the following *Explanation* shall be inserted at the end, namely:—

"*Explanation.*—The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.";

(*ii*) in rule 7, for sub-rule (*1*), the following sub-rule shall be substituted, namely:—

"(*1*) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be

objected to at once by an appeal from the order granting the application or in an appeal from the decree or order finally passed or made in the suit.".

CHAPTER IV

AMENDMENT OF THE FORMS

Amendment of Appendix A.

96. In the First Schedule, in Appendix A, under the heading "(3) PLAINTS",—

(*i*) in Form No. 37, for paragraph 2, the following paragraph shall be substituted, namely:—

"*2. The plaintiff has obtained the leave of the Court for the institution of this suit.

*Not applicable where suit is instituted by the Advocate-General.";

(*ii*) in Form No. 45, in sub-paragraph (*2*) of paragraph 6, for the words "a decree for the balance", the words "an order for the balance" shall be substituted;

(*iii*) in Form No. 46, in paragraph 6, the words "together with mesne profits" shall be added at the end.

Amendment of Appendix B.

97. In the First Schedule, in Appendix B,—

(*i*) in Form No. 2, for the words "and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence", the words "and further you are hereby directed to file on that day a written statement of your defence and to produce on the said day all documents in your possession or power upon which you base your defence or claim for set-off or counter-claim, and where you rely on any other document, whether in your possession or power or not, as evidence in support of your defence or claim for set-off or counter-claim, you shall enter such documents in a list to be annexed to the written statement" shall be substituted;

(*ii*) for Form No. 4, the following Form shall be substituted, namely:—

"No. 4

SUMMONS IN A SUMMARY SUIT
(Order XXXVII, rule 2)

To

(*Title*)

[*Name, description and place of residence*]

WHEREAS has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1908, for Rs. and interest, you are hereby summoned to cause an appearance to be entered for you, within ten days from the service hereof, in default whereof the plaintiff will be entitled, after the expiration of the said period of ten days, to obtain a decree for any sum not exceeding the sum of Rs. and the sum of Rs. for costs, together with such interest, if any, as the Court may order.

If you cause an appearance to be entered for you, the plaintiff will thereafter serve upon you a summons for judgment at the hearing of which you will be entitled to move the Court for leave to defend the suit.

Leave to defend may be obtained if you satisfy the Court by affidavit or otherwise that there is a defence to the suit on the merits or that it is reasonable that you should be allowed to defend.

Given under my hand and the seal of the Court, this day of 19

Judge.";

(*iii*) after Form No. 4, the following Form shall be inserted, namely:—

"No. 4A

SUMMONS FOR JUDGMENT IN A SUMMARY SUIT
(Order XXXVII, rule 3)

(*Title*)

In the Court, at Suit No. of 19

X Y Z *Plaintiff.*

Versus

A B C *Defendant.*

Upon reading the affidavit of the plaintiff the Court makes the following order, namely:—

Let all parties concerned attend the Court or Judge, as the case may be, on the day of 19 , at o'clock in the forenoon on the hearing of the application of the plaintiff that he be at liberty to obtain judgment in this suit against the defendant (or if against one or some or several, insert names) for Rs. and for interest and costs.

Dated the day of 19

Amendment of Appendix D.

98. In the First Schedule, in Appendix D,—

(*i*) for the words "Preliminary Decree", wherever they occur, the word "Decree" shall be substituted;

(*ii*) in Form No. 3, in paragraph 5, for the words "a final decree", the words "an order" shall be substituted;

(*iii*) in Form No. 3A, in paragraph 3, for the words "a final decree", the words "an order" shall be substituted;

(*iv*) in Form No. 4,—

(*a*) in the heading, for the words "FINAL DECREE FOR FORE-CLOSURE", the words "ORDER IN EXECUTION OF A DECREE FOR FORE-CLOSURE" shall be substituted;

(*b*) for the words "a final decree", the words "an order in execution" shall be substituted;

(*v*) in Form No. 5, in paragraph 5, for the words "a final decree", the words "an order" shall be substituted;

(*vi*) in Form No. 5A, in paragraph 3, for the words "a final decree", the words "an order" shall be substituted;

(*vii*) in Form No. 6,—

(*a*) in the heading, for the words "FINAL DECREE FOR SALE", the words "FINAL ORDER IN EXECUTION OF A DECREE FOR SALE" shall be substituted;

(*b*) for the words "a final decree", the words "an order in execution" shall be substituted;

(*c*) the words "and decreed", wherever they occur, shall be omitted;

(*viii*) in Form No. 7, in paragraph 5, for the words "a final decree", the words "an order in execution" shall be substituted;

(*ix*) in Form No. 7A, in paragraph 5, for the words "a final decree", the words "an order in execution" shall be substituted;

(*x*) in Form No. 7B, in paragraph 3, for the words "a final decree", the words "an order in execution" shall be substituted;

(*xi*) in Form No. 7C, in paragraph 3, for the words "a final decree", the words "an order" shall be substituted;

(*xii*) in Form No. 7D,—

(*a*) in the heading for the words "FINAL DECREE", the words "ORDER IN EXECUTION OF A DECREE" shall be substituted;

(*b*) in paragraph 1, for the words "a final decree", the words "an order in execution" shall be substituted;

(*xiii*) in Form No. 7E,—

(*a*) in the heading, for the words "FINAL DECREE", the words "ORDER IN EXECUTION OF A DECREE" shall be substituted;

(*b*) in paragraph 1, for the words "a final decree" the words "an order in execution" shall be substituted;

(*c*) in paragraph 2, the words "and decreed" shall be omitted;

(*xiv*) in Form No. 7F,—

(*a*) in the heading for the words "FINAL DECREE", the words "ORDER IN EXECUTION OF DECREE" shall be substituted;

(*b*) the words "and decreed" shall be omitted;

(*xv*) in Form No. 8,—

(*a*) in the heading for the word "DECREE", the words "ORDER IN EXECUTION" shall be substituted;

(*b*) for the words "final decree", wherever they occur, the word "decree" shall be substituted;

(*c*) the words "and decreed" shall be omitted;

(*xvi*) in Form No. 9,—

(*a*) in paragraph 4, for the words "a final decree", the words "an order in execution" shall be substituted;

(*b*) in paragraph 5, for the words "a final decree", wherever they occur, the words "an order in execution" shall be substituted;

(*xvii*) in Form No. 10,—

(*a*) in paragraph 4, for the words "a final decree", the words "an order in execution" shall be substituted;

(*b*) in paragraph 5, for the words "a final decree", the words "an order in execution" shall be substituted;

(*xviii*) in Form No. 11,—

(*a*) in paragraph 4, for the words "a final decree", the words "an order in execution" shall be substituted;

(*b*) in paragraph 7, for the words "a final decree", the words "an order in execution" shall be substituted;

(*xix*) in Form No. 17, in paragraph 15, for the words "final decree", the words "order in execution" shall be substituted;

(*xx*) in Form No. 18, in the heading, for the words "FINAL DECREE", the words "ORDER IN EXECUTION OF DECREE" shall be substituted;

(*xxi*) in Form No. 20, in the heading, for the words "FINAL DECREE", the words "ORDER IN EXECUTION OF DECREE", shall be substituted;

(*xxii*) in Form No. 21, in the last paragraph, for the words "a final decree", the words "an order in execution of decree", shall be substituted;

(*xxiii*) in Form No. 22, in the heading, for the words "FINAL DECREE", the words "ORDER IN EXECUTION OF DECREE" shall be substituted.

Amendment of Appendix E.

99. In the First Schedule, in Appendix E,—

(*i*) in Form No. 7, after the words "by assignment", the words "or without assignment" shall be inserted;

(*ii*) in Form No. 14, the word "annas" shall be omitted;

(*iii*) after Form No. 16, the following Form shall be inserted, namely:—

"No. 16A

AFFIDAVIT OF ASSETS TO BE MADE BY A JUDGMENT-DEBTOR

[Order XXI, rule 41(2)]

In the Court of

A.B..... *Decree-holder,*

Vs.

C.O..... *Judgment-debtor*

I of

oath

state on——————————— as follows:—

solemn affirmation

1. My full name is———————————
(Block capitals)

2. I live at

*3. I am married

single

widower (widow)

divorced

4. The following persons are dependent upon me:—

5. My employment, trade or profession is that of
carried on by me at

I am a director of the following companies:—

6. My present annual/monthly/weekly income, after paying income-tax, is as follows:—

(*a*) Form my employment, trade or profession Rs.

(*b*) From other sources Rs.

*7. (*a*) I own the house in which I live; its value is Rs.

I pay as outgoings by way of rates, mortgage, interest etc., the annual sum of Rs.

(*b*) I pay as rent the annual sum of Rs.

8. I possess the following:—

(*a*) Banking accounts;
(*b*) Stocks and shares;
(*c*) Life and endowment policies;
(**d**) House property;
(*e*) Other property;
(*f*) Other securities;

} Give particulars.

*Strike off the words which are not applicable.

9. The following debts are due to me:—

(give particulars)

(*a*) From of

Rs.

(*b*) From of

Rs. (etc.)

Sworn before me, etc.";

(*iv*) in Form No. 24, after the first paragraph, the following paragraph shall be inserted, namely:—

"It is also ordered that you should attend Court on the day of 19 , to take notice of the date fixed for settling the terms of the proclamation of sale.";

(*v*) in Form No. 29, in the Schedule of Property, after the existing columns, the following columns shall be added, namely:—

"The value of the property as stated by the decree-holder.	The value of the property as stated by the judgment-debtor.".

Amendment of Appendix H.

100. In the First Schedule, in Appendix H,—

(*i*) after Form No. 2, the following Form shall be inserted, namely:—

"No. 2A

LIST OF WITNESSES PROPOSED TO BE CALLED BY PLAINTIFF/DEFENDANT

(Order XVI, rule 1)

Name of the party which proposes to call the witness	Name and address of the witness	Remarks";

(*ii*) for Form No. 11, the following Forms shall be substituted, namely:—

"No. 11

NOTICE TO CERTIFICATED, NATURAL, OR, *de facto* GUARDIAN

(Order XXXII, rule 3)

(*Title*)

To

(*Certificated/Natural/*de facto *Guardian*)

WHEREAS an application has been presented on the part of the plaintiff*/on behalf of the minor defendant* in the above suit for the appointment of a guardian for the suit for the minor defendant....., you (insert the name of the guardian appointed or declared by Court,

*Strike off the words which are not applicable.

or natural guardian, or the person in whose care the minor is) are hereby required to take notice that unless you appear before this Court on or before the day appointed for the hearing of the case and stated in the appended summons, and express your consent to act as guardian for the suit for the minor, the Court will proceed to appoint some other person to act as a guardian for the minor, for the purposes of the said suit.

Given under my hand and the seal of the Court, this day of 19

Judge.

No. 11A

NOTICE TO MINOR DEFENDANT
(Order XXXII, rule 3)

(*Title*)

To

Minor Defendant.

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of * as guardian for the suit for you, the minor defendant, you are hereby required to take notice to appear in this Court in person on the day of 19 , at o'clock in the forenoon to show cause against the application, failing which the said application will be heard and determined *ex parte.*

Given under my hand and the seal of the Court, this day of 19

Judge.

*Here insert the name of the guardian.

CHAPTER V

REPEAL AND SAVINGS

Repeal and savings.

101. (*1*) Any amendment made, or any provision inserted in the principal Act by a State Legislature or a High Court before the commencement of this Act shall, except in so far as such amendment or provision is consistent with the provisions of the principal Act as amended by this Act, stand repealed.

(*2*) Notwithstanding that the provisions of this Act have come into force or the repeal under sub-section (*1*) has taken effect, and without prejudice to the generality of the provisions of section 6 of the General Clauses Act, 1897,— 10 of 1897.

(*a*) the provision of section 20 of the principal Act, as amended by section 7 of this Act, shall not apply to or affect any suit pending immediately before the commencement of section 7; and every such suit shall be tried as if section 7 had not come into force;

(*b*) the provisions of section 21 of the principal Act, as amended by section 8 of this Act, shall not apply to or affect any suit pending immediately before the commencement of section 8; and every such suit shall be tried as if section 8 had not come into force;

(*c*) the provisions of section 25 of the principal Act, as substituted by section 12 of this Act, shall not apply to or affect any suit, appeal or other proceeding wherein any report has been made under the provisions of section 25 before the commencement of section 12; and every such suit, appeal or other proceeding shall be dealt with as if section 12 had not come into force;

(*d*) the provisions of section 34 of the principal Act, as amended by section 14 of this Act, shall not affect the rate at which interest may be allowed on a decree in any suit instituted before the commencement of section 14 and interest on a decree passed in such suit shall be ordered in accordance with the provisions of section 34 as they stood before the commencement of section 14 as if section 14 had not come into force;

(*e*) the provisions of section 35A of the principal Act, as amended by section 15 of this Act, shall not apply to or affect any proceedings for revision, pending immediately before the commencement of section 15 and every such proceeding shall be dealt with and disposed of as if section 15 had not come into force;

(*f*) the provisions of section 51 of the principal Act, as amended by section 22 of this Act, shall not apply to any application, pending immediately before the commencement of section 22, for the arrest and detention of the judgment-debtor in execution of a decree; and every such arrest and detention shall be made as if section 22 had not come into force;

(*g*) the provisions of section 60 of the principal Act, as amended by section 24 of this Act, shall not apply to any attachment made before the commencement of section 24;

(*h*) the omission of section 80 of the principal Act by section 28 of this Act shall not apply to or affect any suit instituted before the commencement of section 28; and every such suit shall be dealt with as if section 80 had not been omitted;

(*i*) the provisions of section 82 of the principal Act, as amended by section 29 of this Act, shall not apply to or affect any decree passed against the Union of India or a State or, as the case may be, a public officer, before the commencement of section 29 or to the execution of any such decree; and every such decree or execution shall be dealt with as if section 29 had not come into force;

(*j*) the provisions of section 91 of the principal Act, as amended by section 31 of this Act, shall not apply to or affect any suit, appeal or proceeding instituted or filed before the commencement of section 31; and every such suit, appeal or proceeding shall be disposed of as if section 31 had not come into force;

(*k*) the provisions of section 92 of the principal Act, as amended by section 32 of this Act, shall not apply to or affect any suit, appeal or proceeding instituted or filed before the commencement of the said section 32; and every such suit, appeal or proceeding shall be disposed of as if section 32 had not come into force;

(*l*) the provisions of section 96 of the principal Act, as amended by section 34 of this Act, shall not apply to or affect any appeal against the decree passed in any suit instituted before the commencement of section 34; and every such appeal shall be dealt with as if section 34 had not come into force;

(*m*) the provisions of section 100 of the principal Act, as substituted by section 39 of this Act, shall not apply to or affect any appeal from an appellate decree or order which had been admitted, before the commencement of section 39, after hearing under rule 11 of Order XLI; and every such admitted appeal shall be dealt with as if section 39 had not come into force;

(*n*) section 100A, as inserted in the principal Act by section 40 of this Act, shall not apply to or affect any appeal against the decision of a single Judge of a High Court under any Letters Patent which had been admitted before the commencement of section 40; and every such admitted appeal shall be disposed of as if section 40 had not come into force;

(*o*) the omission of section 115 of the principal Act by section 45 of this Act shall not apply to or affect any proceeding for revision which had been admitted, after preliminary hearing, before the commencement of section 45; and every such proceeding for revision shall be disposed of as if section 45 had not come into force;

(*p*) the provisions of section 141 of the principal Act, as amended by section 50 of this Act, shall not apply to or affect any proceeding which is pending immediately before the commencement of section 50; and every such proceeding shall be dealt with as if section 50 had not come into force;

(*q*) the provisions of rules 31, 32, 48A, 57 to 59, 90 and 97 to 103 of Order XXI of the First Schedule as amended or, as the case may be, substituted or inserted by section 75 of this Act shall not apply to or affect—

(*i*) any attachment subsisting immediately before the commencement of section 75, or

(*ii*) any suit instituted before such commencement under rule 63 aforesaid to establish right to attached property or under rule 103 aforesaid to establish possession, or

(*iii*) any proceeding to set aside the sale of any immovable property,

and every such attachment, suit or proceeding shall be continued as if section 75 had not come into force;

(*r*) the provisions of rule 4 of Order XXII of the First Schedule, as substituted by section 76 of this Act, shall not apply to any order of abatement made before the commencement of section 76;

(*s*) the amendment or substitution made in Order XXIII of the First Schedule by section 77 of this Act shall not apply to any suit or proceeding pending before the commencement of section 77;

(*t*) the provisions of rules 5A and 5B of Order XXVII, as inserted by section 79 of this Act, shall not apply to any suit, pending immediately before the commencement of section 79, against the Government or any public officer; and every such suit shall be dealt with as if section 79 had not come into force;

(*u*) the provisions of rules 1A, 2A and 3 of Order XXVIIA, as inserted or substituted, as the case may be, by section 80 of this Act shall not apply to or affect any suit which is pending before the commencement of section 80;

(*v*) rules 2A, 3A and 15 of Order XXXII of the First Schedule, as amended or substituted by section 82 of this Act, shall not apply to a suit pending at the commencement of section 82; and every such suit shall be dealt with and disposed of as if section 82 had not come into force;

(*w*) the provisions of Order XXXIII of the First Schedule, as amended by section 84 of this Act, shall not apply to or affect any suit or proceeding pending before the commencement of section 84 for permission to sue as a pauper; and every such suit or proceeding shall be dealt with and disposed of as if section 84 had not come into force;

(*x*) the provisions of Order XXXIV of the First Schedule, as amended by section 85 of this Act, shall not apply to any preliminary or final decree passed in a suit instituted before the commencement of section 85; and every such preliminary decree or proceeding for final decree shall be dealt with and disposed of as if section 85 had not come into force;

(*y*) the provisions of Order XXXVII of the First Schedule, as amended by section 87 of this Act, shall not apply to any suit pending before the commencement of section 87; and every such suit shall be dealt with and disposed of as if section 87 had not come into force;

(*z*) the provisions of Order XXXIX of the First Schedule, as amended by section 89 of this Act, shall not apply to or affect any injunction subsisting immediately before the commencement of section 89; and every such injunction and proceeding for disobedience of such injunction shall be dealt with as if section 89 had not come into force;

(*za*) the provisions of Order XLI of the First Schedule, as amended by section 90 of this Act, shall not apply to or affect any appeal pending immediately before the commencement of section 90; and every such appeal shall be disposed of as if section 90 had not come into force;

(*zb*) the provisions of Order XLIII of the First Schedule, as amended by section 92 of this Act, shall not apply to any appeal against any order pending immediately before the commencement of section 92; and every such appeal shall be disposed of as if section 92 had not come into force.

CHAPTER VI

AMENDMENT OF THE LIMITATION ACT, 1963

Amendment of Schedule of Act 36 of 1963.

102. In the Limitation Act, 1963, in the Schedule, in the entry in the second column, against article 127, for the words "Thirty days", the words "Sixty days" shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The law relating to the procedure in suits and civil proceedings in India (except those in the State of Jammu and Kashmir and Nagaland and the Tribal Areas of Assam and certain other areas) is contained in the Code of Civil Procedure, 1908. The Code has been amended from time to time by various Acts of the Central and State Legislatures. The Code is mainly divided into two parts, namely, Sections and Orders. While the main principles are contained in the sections, the detailed procedures with regard to the matters dealt with by the sections are specified in the Orders. Under section 122, the High Courts have powers to amend, by rules, the procedure laid down in the Orders. In exercise of these powers, various amendments have been made in the Orders by the different High Courts.

2. The Law Commission, in its Fourteenth Report on the "Reform of Judicial Administration", indicated the broad lines on which the Code should be revised, but left more detailed examination of the revision to be undertaken separately. A detailed and comprehensive examination of the question of the revision of the Code of Civil Procedure, 1908, was undertaken by the Commission in its Twenty-seventh Report. While making these recommendations, the Law Commission took into consideration the recommendations made by it in its Fourteenth Report, the amendments made by the various State Legislatures in the body of the Code, the amendments made in the Orders by the various High Courts, and the Rules of Procedure in the United Kingdom. A Bill, incorporating the recommendations made by the Law Commission in its Twenty-seventh Report, was introduced in Parliament in 1968. That Bill was referred to a Joint Committee of both Houses of Parliament. While the Bill, as reported by the Joint Committee, was pending before the Lok Sabha, it lapsed owing to the dissolution of that House.

3. Before re-introducing the said Bill, the Law Commission was requested to further examine the Code from the basic angle of minimising costs, avoiding delay in litigation, implementing the directive principles and resolving divergence of judicial opinions with regard to certain provisions of the Code. The Law Commission submitted its Fifty-fourth Report on the Code of Civil Procedure in February, 1973. In this Report, the recommendations made by the Law Commission in its Fourteenth and Twenty-seventh Reports have also been considered.

4. The Law Commission had also recommended, in its Fourteenth Report, the insertion of a new Order, namely, Order XVIA, in the Code of Civil Procedure, with regard to the attendance of prisoners in Courts for the purposes of giving evidence. The Law Commission, in its Fifty-fifth Report, made recommendations with regard to the rate of interest for the period after decree and interest on costs under sections 34 and 35 of the Code of Civil Procedure.

5. After carefully considering the recommendations made by the Law Commission in its Twenty-seventh, Fortieth, Fifty-fourth and Fifty-fifth Reports, the Government have decided to bring forward the present Bill for the amendment of the Code of Civil Procedure, 1908, keeping in view, among others, the following basic considerations, namely:—

(*i*) that a litigant should get a fair trial in accordance with the accepted principles of natural justice;

(*ii*) that every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed;

(*iii*) that the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases.

6. Some of the more important changes, proposed to be made by the Bill, are as follows:—

(*a*) The doctrine of *res judicata* is being made more effective.

(*i*) The principle behind the doctrine of *res judicata* is that issues heard and finally decided between the parties to a suit should not be allowed to be re-agitated by the parties or any person claiming through them in a subsequent litigation. The condition precedent for applying the bar of *res judicata* against the trial of any suit or issue is, however, that the previous Court must have been competent to try the subsequent suit or the suit in which the issue is subsequently raised. The existence of this condition, to a certain extent, detracts from the finality of the judgments of Courts of limited jurisdiction and gives rise to certain amount of multiplicity of proceedings. It is, therefore, proposed to amend the Code with a view to empowering a Court of limited jurisdiction to submit a suit or case to the District Court to enable it to try the suit or case or to transfer the suit or case to a Court of competent jurisdiction, if the District Court is satisfied that the suit or case involves a question of such nature that, if it had been brought for relief based mainly on that question, the Court of limited jurisdiction would have been incompetent to try it.

(*ii*) Where the finding of the Court on an issue is against the successful party, such finding does not become *res judicata* in a subsequent litigation because the successful party had no right of appeal against the finding on such issue, the decree having been in his favour. With a view to solving this difficulty, the Code is being amended to give a right to the successful party to file an appeal against the finding which is adverse to him, so that the decision of the Appellate Court may operate as *res judicata* in a subsequent litigation.

(*iii*) The doctrine of *res judicata* is also being extended to independent proceedings and also to execution proceedings.

(*b*) The power to transfer proceedings from a High Court in a State to any other High Court, which now vests in the State Government, is being conferred on the Supreme Court.

(c) Interest for the post-decretal period in respect of liabilities arising out of commercial transactions is being increased, in the cases of decrees for sums exceeding Rs. 10,000, to the contractual rate, or where there is no contractual rate, to the rate at which moneys are lent by nationalised banks for commercial transactions.

(*d*) The freedom from attachment of a portion of salary is now available to a Government servant or a servant of a railway company or local authority. This protection is being extended to all salaried employees.

(*e*) Section 80, which provides for compulsory notice before the institution of a suit against a Government or a public officer is being omitted because, it is felt, that the State or public officer should not have a privilege in the matter of litigation as against a citizen and should not have a higher status than an ordinary litigant in this respect.

(*f*) The right to prefer an appeal against a decree passed in a suit of the nature cognizable by a Court of Small Causes is being restricted in respect of cases in which the amount or value of the subject-matter of the original suit does not exceed three thousand rupees. In such cases, appeals are being allowed only on questions of law.

(*g*) Second appeals are being allowed only on such questions as are certified by the High Court to be substantial questions of law.

(*h*) It is being provided that there will be no further appeal against the decision of a single Judge of a High Court in a second appeal.

(*i*) Section 115 empowers a High Court to call for the records of cases decided by inferior Courts and to exercise powers of revision in cases where the inferior Courts had exercised jurisdiction not vested in them or had failed to exercise jurisdiction so vested in them or had acted illegally or with material irregularity in the exercise of their jurisdiction. Since cases of errors in the exercise of jurisdiction or non-exercise of jurisdiction or illegality or material irregularity in the exercise of jurisdiction may be corrected under article 227 of the Constitution, section 115 is being omitted.

(*j*) Section 132 provides that women, who, according to the customs and manners of the country, ought not to be compelled to appear in public, shall be exempt from personal appearance in Courts. The seclusion of women being inconsistent with the social philosophy on which Constitution of India is founded and having regard to customs and manners prevailing at the present day, this section is being omitted.

(*k*) The period during which a member of a Legislature cannot be arrested and detained under a civil process is being increased from fourteen to forty days.

(*l*) Provisions are being made to ensure that written statements and documents are filed without delay.

(*m*) New Order XVIA is being inserted to provide for the attendance of prisoners in Courts for the purpose of giving evidence.

(*n*) New Order XXXIIA is being inserted to provide a special procedure in litigation concerning the affairs of a family.

(*o*) The practice of passing preliminary and final decrees in mortgage suits and other suits is being abolished. In such suits, there will be only one decree, so that there may not be more than one appeal in a suit.

(*p*) The scope of summary trials is being substantially widened.

(*q*) Some of the more important changes, intended to provide relief to the poorer sections of the community, are—

(*i*) provisions for awarding compensatory costs against a party for delaying any stage of the litigation;

(*ii*) a petty decree, that is to say, a decree the amount of which does not exceed two hundred rupees, will not be executable by the arrest and detention of the judgment-debtor;

(*iii*) the non-attachable portion of the salary of the judgment-debtor is being increased to the first two hundred and fifty rupees and to two-thirds of the remainder, so that only one-third of the remainder of the salary will be liable to attachment in execution of a decree;

(*iv*) the list of non-attachable properties is being enlarged by providing that the following properties will not also be attachable in execution of a decree, namely:—

(*a*) houses and other buildings of a labourer or a domestic servant;

(*b*) moneys payable under a policy of insurance on the life of the judgment-debtor;

(*c*) the interest of a lessee of a residential building, to which the provisions of law relating to control of rents and accommodation apply;

(*v*) while pronouncing judgment in an appealable case, it will be the duty of the Judge to inform the party, who is not represented by a pleader, as to the Court to which an appeal would lie against the judgment or decree and the period of limitation for such appeal;

(*vi*) for the purpose of enabling a person to sue as an indigent person, the test of the means of the applicant is being substantially liberalised and it is being provided that a person will be regarded as an indigent person if he is not entitled to properties worth one thousand rupees other than the properties exempt from attachment in execution of a decree and the subject-matter of the suit;

(*vii*) where a person is permitted to sue as an indigent person, a duty is being imposed on the Court to assign a pleader to

him, if he is not represented by a pleader; and the High Courts are being empowered to make rules as to the mode of selection of such pleaders and the facilities which are to be provided to them.

7. The notes on clauses explain in detail the important provisions of the Bill.

NEW DELHI;
The 12*th March*, 1974.

H. R. GOKHALE.

Notes on clauses

Clause 2.—The amendment sought to be made in section 1 is of a clarifying nature. Consequent on the formation of the State of Andhra Pradesh, East Godavari, West Godavari and Visakhapatnam Agencies ceased to be a part of the then State of Madras. Likewise, consequent on the constitution of the Laccadive, Minicoy and Amindivi Islands into a Union territory by the States Re-organisation Act, 1956, those Islands also had ceased to be a part of the then State of Madras. Thus there are, at present, no areas in the erstwhile State of Madras to which the Code does not extend. The amendment is intended to reflect the present position as explained above.

The State of Nagaland includes the Naga Hills District and the Naga Tribal Areas. Since administration of civil justice in the Naga Hills District is governed by the rules for the administration of justice and police made by the Governor of Assam, it has been provided that the provisions of the Bill will not initially extend to the State of Nagaland or the Tribal Areas as defined in Paragraph 20 of the Sixth Schedule to the Constitution as in force before the 21st January, 1972. Power has, however, been given to the concerned State Government to extend the said provisions to the State of Nagaland or the Tribal Areas with such supplemental, incidental or consequential modifications as that Government may think fit.

The Laccadive, Minicoy and Amindivi Islands (Laws) Regulation 1965 (8 of 1965) and Laccadive, Minicoy and Amindivi Islands (Civil Courts) Regulation, 1965 (9 of 1965) have been promulgated by the President. The effect of these Regulations is to make the Code applicable to the said Islands subject to certain conditions. Since these Regulations have already been brought into force, it is made clear that the application of the Code to those Islands shall be without prejudice to the special provisions contained in the Regulations for the time being in force applicable to that territory.

In view of the change of the name of Laccadive, Minicoy and Amindivi Islands by Act No. 34 of 1973, the reference to that name has been changed to "Lakshadweep".

Clause 3—*Sub-clause* (*i*).—In view of the omission of the requirement of passing preliminary and final decrees in certain mortgage suits and other suits, consequential amendments are being made in clause (2) of section 2.

Sub-clause (*ii*).—In clause (17) of section 2, the words "an All-India Service" are being substituted in place of the words "the Indian Civil Service".

Clause 4.—In section 8 of the Code, references have been made to, sections 155 to 158. But by Act 17 of 1914, section 156 was repealed; and by Act 48 of 1952, section 155 was repealed. In the circumstances, this clause seeks to omit reference to section 155 and 156 in section 8.

Clause 5.—Section 9 of the Code empowers the Civil Courts to try all suits of a civil nature, except where the cognizance of such suits is either expressly or impliedly barred. The Explanation to that section provides that a suit in which a right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may

depend entirely on the decision of questions as to religious rites or ceremonies. There is divergence of opinion between the different High Courts on the point as to whether the suits relating to religious offices to which fees are not attached, namely, (i) offices which are attached to a sacred spot, and (ii) offices which are not so attached, are or are not covered by the section. The Bombay High Court recognised the distinction between these two offices and the majority of the decisions of that High Court allowed a suit for an office which is attached to a sacred spot, but not for an office which is not so attached. The other High Courts did not recognise this distinction. In view of the divergence of judicial opinion, the law is being clarified so as to override the distinction which was made in some cases by the Bombay High Court.

Clause 6.—Section 11 of the Code embodies the principles of *res judicata*. A question has arisen as to whether an express provision should be inserted, extending the principles of *res judicata* not only to execution proceedings but also to independent proceedings. New section 11A is being inserted to make express provision to the effect that the principles of *res judicata* shall apply to execution proceedings as well as to independent proceedings.

Clause 7.—Explanation I to section 20 provides that, if a person has a permanent dwelling and a temporary residence at different places, he shall be deemed to reside at both the places in respect of any cause of action arising at the temporary residence. It is not clear whether the Explanation is intended to expand the scope of the main part of the section or to limit it. Under the main part of the section, a suit can be filed either where the defendant actually and voluntarily resides or carries on business or personally works for gain or where the cause of action arises in whole or in part. If the object of the Explanation is to indicate that temporary residence is enough to give jurisdiction, then the further requirement as to the cause of action is not intelligible. If, on the other hand, the object of the Explanation is to give jurisdiction to the Court within whose jurisdiction the permanent dwelling is situated, even then the requirement as to cause of action renders the Explanation useless. Further, while the main part of the section provides for actual and voluntary residence, the Explanation extends only to residence and, as such, the Explanation is not in total harmony with the main section. Having regard to the defect in the Explanation, the Explanation is being ommitted.

Explanation II to section 20 provides that a corporation shall be deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place. While the first part of the Explanation is useful, the second part appears to be otiose because if no part of the cause of action arises at the place of the branch office, the corporation cannot be said to transact business at that place. Consequently, the purpose of the second part of the Explanation appears to be obscure and that part does not appear to serve any useful purpose. It is felt that the present restriction, as was pointed out in Bharat Insurance Company *vs.* Wasudeo (A.I.R. 1956 Nagpur 200, at page 204), causes hardship and, as such, requires modification. Accordingly, the second Explanation is being modified

Under clause (c) of section 20, a suit can be filed where the cause of action arises wholly or in part. It is well-settled that, in the case of a suit on contract, the cause of action arises in part where the contract is to be performed. There is, however, a controversy as to the place where a debt is to be repaid. There is a divergence of opinion between the High Courts on this point. While the Bombay, Calcutta and Madras High Courts have held that the English rule that the debtor must find the creditor should be invoked for the purpose of giving competence to a Court having jurisdiction at the place where the creditor resides or carries on business, the Punjab High Court holds the opposite view. In view of the divergence of judicial opinion, a new Explanation is being inserted to the effect that, in the absence of a term in the contract to the contrary, in a suit for recovery of money, the cause of action should be deemed to arise in part at the place where the person, to whom the money is due, resides.

Clause 8.—Section 21 provides that objection as to the place of suing is not to be allowed unless such objection was taken in the Court of first instance at the earliest possible opportunity and unless there has been a consequent failure of justice.

It often happens that the judgment of a Court is challenged in appeal or revision not only on the ground of place of suing but also on the ground of pecuniary jurisdiction of the Court. With a view to expediting the disposal of suits, a new sub-section, similar to the provisions of section 21, is being included in section 21 to the effect that objections as regards pecuniary jurisdiction should be raised at the earliest opportunity and, even if so taken, should not prove fatal unless there has been a consequent failure of justice.

While section 21 deals only with objections as to the place of suing, that section does not cover a case where an attack is made on the validity of the execution proceedings on the ground that they had been held in a wrong Court. With a view to avoiding delay in execution, an express provision is being included in new sub-section (3) of section 21 to the effect that objections as to the territorial competence of a Court executing decree should be disallowed unless such objection was taken at the earliest possible opportunity and unless there has been a consequent failure of justice.

Clause 9.—Section 21 enjoins that no objection as to the place of suing shall be allowed by an Appellate or Revisional Court unless such objection was taken in the Court of the first instance at the earliest opportunity, etc. There has been a conflict of decisions on the question whether the defect of jurisdiction can be made a good ground of attack in a new suit. Madras, Bombay, Lahore and Nagpur High Courts took the view that, if a decree is passed against a person without objection as to jurisdiction having been raised, that person cannot, in a subsequent suit, attack the decree on the ground of want of jurisdiction. A contrary view has been taken by the Allahabad and Calcutta High Courts.

New section 21A is being inserted to give effect to the view taken by the High Courts of Madras, Bombay, Lahore and Nagpur.

Clause 10.—There is a conflict of decisions with regard to the question whether section 24 applies in relation to a transfer of a suit from a Court which has no jurisdiction to try it. The High Court of Andhra Pradesh has held that the language of section 24 is very wide and there

are no restrictions or impediments in the way of the High Court exercising the power of transfer merely because there is a dispute regarding jurisdiction. Some other High Courts have taken a contrary view. It is being clarified that a case may be transferred from a Court which has no jurisdiction to try it.

There is also divergence of judicial opinion as to whether section 24 applies to execution proceedings. The Calcutta High Court had taken the view that the execution proceedings are not covered by section 24 while other Courts had taken a different view. It is, therefore, being clarified that the expression "proceeding" in section 24 includes a proceeding for the execution of a decree or order.

Clause 11.—Under section 11 of the Code, one of the conditions precedent for applying the bar of *res judicata* against the trial of any suit or issue is that the previous Court must have been competent to try the subsequent suit or the suit in which the issue is raised once again. The existence of this condition, to a certain extent, detracts from the finality of the judgments of Courts of limited jurisdiction and gives rise to a certain amount of multiplicity of proceedings. In the circumstances, the Code is being amended by inserting new section 24A to confer a power on Courts of limited jurisdiction to submit the case to the District Court whenever the Court of limited jurisdiction is satisfied that the suit involves a question of such a nature that if a suit had been brought for relief based principally on that question, the Court would have been incompetent to try the suit and thereupon the District Court may either withdraw the suit to itself and try it or transfer the suit to a Court which would be competent to try the suit, so that the finding on that issue would be a finding of a competent Court and operate as *res judicata* in a subsequent suit.

Clause 12.—Section 25 of the Code empowers the State Government to transfer suits, etc., in certain circumstances from the High Court exercising jurisdiction in the State to another High Court. This section is very narrow in scope as it provides only for the transfer of suit, appeal or other proceeding pending in a High Court presided over by a single Judge. Besides, the State Government does not seem to be an appropriate agency for exercising the power of transfer. Section 25 is, therefore, being substituted by a new section which provides for the transfer to the Supreme Court the existing powers vested with the State Government and to confer on the Supreme Court such wide powers of transfer as it has in criminal cases under section 406 of the Code of Criminal Procedure, 1973. Further, the new section covers transfer of cases from or to the original side of a High Court to or from any other Civil Court. The new section is thus wider in scope than section 406 of the Code of Criminal Procedure, 1973.

Clause 13.—Section 28 of the Code provides for the service of summons where the defendant resides in another State. In such a case, the summons is to be sent for service to a Court in the other State and the Court to which the summons is so sent is to return the summons, after service, to the Court by which it was issued together with the record of the proceedings with regard to the service of such summons. Where the language of the Court by which such summons is served is different from the language of the Court by which the summons was issued, a difficulty may arise with regard to the record of the proceedings in relation to the service of summons. In the circumstances, section 28 is being amended to provide that the return of the record should, in appropriate cases, be

translated into English or Hindi, so that the Court which issued the summons may be able to understand the action which has been taken on the summons.

Clause 14.—Section 34 of the Code empowers the Court to award interest at reasonable rate on the principal sum adjudged for the period—

(i) prior to the institution of the suit, and
(ii) during the pendency of the suit, and
(iii) from the date of the decree to the date of payment.

The Code further empowers the Court to award interest for the post-decretal period at a rate not exceeding six per cent. per annum. The provision of law for payment of interest for the post-decretal period at a rate not exceeding six per cent. has been exploited by commercial operators because they were aware that they may lend the money borrowed by them at a rate higher than six per cent. and thereby earn profit. The section is being amended to provide that the rate of interest for the post-decretal period shall not exceed the contracted rate of interest or where there is no contractual rate, at the rate at which loans are advanced by nationalised banks.

Clause 15.—Section 35A is being amended to exclude its application to revision proceedings and to enhance the maximum amount of compensation that may be awarded thereunder from one thousand rupees to two thousand rupees. In this connection, it may be mentioned that in U.P., by Uttar Pradesh Act 24 of 1954, this section has already been amended.

Clause 16.—Sometimes, a party, though successful in the litigation, is responsible for causing undue delay in respect of particular stages of the litigation. It is but fair that such delay should be taken into account while awarding costs. More often than not, solvent parties resort to dilatory tactics to cripple the opposite party. Instances are also not rare where a party with a bad case tries to delay the matter. In some other cases, the litigation is aimed at delaying the relief to which the opposite party is entitled. New section 35B is, therefore, being inserted to give to the Court a discretion to impose compensatory costs on parties who are responsible for delaying any stage of the litigation and such costs would be irrespective of the ultimate outcome of the litigation.

Clause 17.—Section 36 is being substituted by a new section to clarify that the provisions relating to execution of a decree or order include payment under a decree or order as well.

Clause 18.—There is a conflict of decisions on the point as to whether in cases where jurisdiction over the subject-matter of a decree is transferred to another Court that Court is also competent to entertain an application for execution of the decree.' The Calcutta High Court has held that both the Courts would be competent to entertain an application for execution of the decree but the Madras High Court has held that in the absence of an order by the Court which passes the decree that Court can alone entertain an application for execution and not the Court to whose jurisdiction the subject-matter has been transferred. The Supreme Court has left the point open. Proposed Explanation to section 37 seeks to give effect to the Calcutta view.

Clause 19.—Section 39 of the Code provides for the transfer for execution of a decree by the Court which passed the decree to another

Court. There is a conflict of decisions with regard to this section as to whether—

(i) the transferee Court must be a Court of competent pecuniary jurisdiction; and

(ii) if so, whether the competence should be judged with reference to the decree or suit.

The section is being amended to clarify the position by providing that the transferee Court must have pecuniary competence to deal with the suit in which the decree was passed.

Clause 20.—With a view to avoiding unnecessary delay in execution proceedings, section 42 is being amended to confer powers on a Court to which a decree is transmitted for execution to exercise, where necessary, the following powers, namely:—

(i) to send the decree for execution to another Court,

(ii) to execute the decree against the legal representatives of the judgment-debtor,

(iii) to order attachment of a decree.

With regard to the exercise of these powers, a transferee Court should be as much competent as the Court of first instance. At the same time special provision is being made [*vide* proposed sub-section (4) of section 42] to ensure that matters which should be determined by the Court which passed the decree are not considered by the transferee Court.

Clause 21.—Section 47 is being amended for the purpose of setting at rest the conflict of decisions on the point whether a claim for possession by a purchaser in Court auction in pursuance of execution of a decree is or is not a question relating to the execution of the decree. The amendment seeks to make it clear that such a question is a question falling under this section. New Explanation I is a reproduction of the existing Explanation to the section except that the portion relating to auction purchaser (which is covered by new Explanation II) has been omitted.

Clause 22.—Section 51 is being amended to provide that a decree should not be executed by the arrest and detention in prison of the judgment-debtor if he has any lawful excuse for leaving the local limits of the jurisdiction of the Court or if he has any lawful excuse for refusing or neglecting to pay the amount of the decree or substantial part thereof.

Clause 23.—Section 58 of the Code deals with detention in civil prison of a judgment-debtor and it provides, *inter alia*, that where the decree is for the payment of a sum of money exceeding fifty rupees, the period of detention shall be six months and that in other cases the period shall be six weeks. In view of the changed economic conditions, the limit is being raised to one thousand rupees, and it is also being provided that where the amount of the decree does not exceed two hundred rupees, detention in civil prison shall not be ordered so that poor people may not be harassed for the recovery of petty amounts.

Clause 24.—Sub-section (1) of section 60 of the Code authorises, subject to certain exceptions, the attachment and sale of the property of the judgment-debtor. The proviso to sub-section (1) enumerates certain properties as exempt from attachment. The Bill seeks to enlarge some of the exemptions, namely:—

(i) houses and buildings of labourers and domestic servants are also being exempted from attachment;

(ii) salary to the extent of the first two hundred and fifty rupees and two-thirds of the remainder are being exempted from attachment;

(iii) proviso to clause (i) is being substituted to remove the distinction between judgment-debtors who are servants of the Government or a railway company and other salaried judgment-debtors;

(iv) life insurance policies are being exempted from attachment;

(v) tenancies in respect of residential buildings, to which rent control laws are applicable, are being exempted from attachment;

(vi) "agriculturist" is being defined so as to include persons whose livelihood depends on income derived from agriculture;

(vii) "wages" are being so defined as to include bonus; and

(viii) "labourer" is being so defined as to include a skilled and semi-skilled labourer.

A new sub-section, namely, sub-section (1A), is being inserted with a view to providing that any agreement to waive any exemption shall be void.

Clause 25.—Sub-section (2) of section 63 of the Code provides that the provisions of sub-section (1) of that section shall not invalidate any proceeding taken by a Court executing one of the several decrees referred to in that sub-section. A question arose as to whether the expression "proceeding taken by Court" excludes a set-off allowed to a decree-holder—auction-purchaser. While most of the High Court had answered the question in the negative, the Calcutta High Court had taken a contrary view. In view of the divergence of judicial opinion, an Explanation is being inserted after sub-section (2) to clarify the matter.

Clause 26.—Section 66 provides that a suit is not maintainable against a purchaser certified by the Court on the ground that the purchase was made on behalf of the plaintiff. The section is being amended to add an additional bar, namely, a bar in relation to defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person.

Clause 27.—Section 75 of the Code deals with the issue of commissions for the purposes referred to therein. In view of the specific mention of the items for which a commission may be issued, there is a doubt as to whether the Court has power to issue a commission for making inventories of account-books and other articles. The section is being amended to confer a power on the Court to issue commissions for conducting scientific inquiries when such an inquiry is needed for determination of any issue before the Court. The Court is also being empowered to appoint commissions to hold sales otherwise than in execution, and also to issue commissions for the performance of any ministerial act.

Clause 28.—Section 80 provides that no suit shall be instituted against the Government or against a public officer in respect of an act purporting to be done by him in his official capacity until the expiration of two months after a notice in writing has been given. The object appears to be to give to the Government or public officer an opportunity to examine

the legal position and to settle the claim, if so advised, and avoid litigation. In a democratic country, there should be no distinction of the kind envisaged in section 80 between the citizen and the State. In those cases where a litigant rushes to the Court without giving an opportunity to the other party to settle the claim, the general rules as to disallowance of costs should be adequate. The section is, therefore, being omitted.

Clause 29.—Section 82 of the Code prescribe an elaborate procedure which has to be followed before execution of a decree or order against the Government or a public servant. The section contemplates the following stages, namely:—

(i) a time has to be specified in the decree for its satisfaction;

(ii) if the decree remains unsatisfied on the expiry of the specified time, a report has to be made by the Court to the State Government;

(iii) after the report, the Court must wait for a further period of three months and can issue execution only if the decree remains unsatisfied for the said period of three months.

The section is being amended to eliminate the intermediate report to Government and to empower the Court to fix a time within which the decree should be satisfied and also to extend the period so fixed.

Clause 30.—Section 86 of the Code provides that a suit cannot be instituted against the Ruler of a foreign State without the consent of the Central Government. These provisions are based on the principle that the dignity and independence of the Ruler would be endangered if any person is allowed to sue him at his pleasure and such a suit may cause political inconvenience and complications. There is, however, a defect in section 86 which should be remedied. This defect lies in its over-emphasis on the concept of the "Ruler" of a foreign State. Primarily it is the State which ought to be immune; the personal immunity of the Ruler, if any, ought to be secondary, at least in modern times. The Supreme Court has held in Ali Akbar *vs.* U.A.R. 1966 (A.I.R. S. E. 230) that section 86 applies to all foreign States whether the form of Government be monarchic or not. The interpretation is being adopted by making foreign States immune. The immunity for Rulers may, however, be preserved for exceptional cases.

Clause 31.—Sub-section (1) of section 91 of the Code authorises the filing of a suit in respect of a public nuisance by the Advocate-General or by two or more persons who have obtained the written consent of the Advocate-General. The section is being amended to the effect that it would be enough if the leave of the Court is obtained by such two or more persons. The provisions of the sub-section are being extended to wrongful acts other than public nuisance which affect the public.

Clause 32.—Sub-section (1) of section 92 authorises the filing of a suit in respect of breach of any express or constructive trust created for public purposes of a charitable or religious nature by the Advocate-General or by two or more persons who have obtained the written consent of the Advocate-General. The section is being amended to provide for leave of the Court in the case of a suit by two or more persons, and to incorporate therein the doctrine of *cy pres* without waiting for revision of the law relating to public trusts.

Clause 33.—Section 95 of the Code provides for the award of compensation to the defendant for the expense or injury caused to him as a result of the plaintiff obtaining his arrest or attachment or obtaining a temporary injunction against him on insufficient grounds. There has been a conflict of judicial decisions as to whether the expression "injury" includes injury to reputation, and as to whether compensation can be awarded under the section in respect of injury to reputation. The Madras High Court has held that "injury" includes injury to reputation. The Bombay High Court had also held earlier that "injury" includes injury to reputation; but a later Bench of the Bombay High Court, as also the Calcutta and Mysore High Courts have taken the view that "injury" does not include injury to reputation. The section is being amended to make it clear that "injury" includes injury to reputation.

Clause 34.—Section 96 of the Code allows first appeal against every decree. There is, however, restriction in the Presidency Small Cause Courts Act, 1882 and in the Provincial Small Cause Courts Act, 1887, with regard to appeals against the decrees passed by Courts of Small Causes. There should be no appeal on facts from decrees passed in petty suits where the amount or value of the subject-matter of the original suit does not exceed three thousand rupees, if the suits in which such decrees are passed are of the nature cognizable by Courts of Small Causes. The section is being amended to achieve the said purpose.

A party aggrieved by a finding in a suit cannot appeal against such finding if the ultimate decision in the suit is in his favour. Consequently, the finding of the Court does not operate as *res judicata* in a subsequent suit. With a view to removing this difficulty, an Explanation is being added to sub-section (1) to the effect that a party aggrieved by a finding of a Court incorporated in the decree may appeal from the decree in so far as it relates to that finding notwithstanding that the ultimate decision in the suit is in his favour.

Clause 35.—Certain words, which have become unnecessary owing to passage of time, have been substituted in section 97.

Clause 36.—Sub-section (2) of section 98 of the Code deals with cases where the Judges hearing an appeal are evenly divided. The provision, however, is not comprehensive enough as it does not cover the case where a Bench of more than two Judges is equally divided and reference to another Judge is practicable. The proviso is being amended to cover such cases also. Under the proviso above-mentioned, reference to a third Judge is permissible only with respect to difference as to points of law.

Clause 37.—Section 99 of the Code, which, *inter alia*, saves irregularity in respect of misjoinder of parties or cause of action, does not apply to non-joinder. The section is being amended to cover this omission. A proviso is, however, being added to indicate that the non-joinder of a necessary party will not be saved by this section.

Clause 38.—New section 99A is being inserted to provide that no order under section 47 shall be reversed or substantially varied nor shall any case relating to such order be remanded in appeal on account of any error, defect or irregularity in any proceeding relating to such order, unless such error, defect or irregularity has prejudicially affected the decision of the case.

Clause 39.—Section 100 of the Code provides that a second appeal may lie to the High Court from a decree passed in appeal by any Court subordinate to the High Court on any of the following grounds, namely:—

(a) the decision being contrary to law or to some usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law; and

(c) a substantial error or defect in procedure provided by the Code or any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits.

Clauses (a), (b) and (c) of section 100 are very wide in effect and clauses (b) and (c) have led to plethora of conflicting judgments. In dealing with second appeals, the Courts have devised, and successfully adopted, several concepts, such as, a mixed question of fact and law, a legal inference to be drawn from facts proved, and even the point that the case has not been properly approached by the Courts below. This has created confusion in the minds of the public as to the legitimate scope of the second appeal under section 100 and has burdened the High Courts with an unnecessarily large number of second appeals. Section 100 is, therefore, being amended to provide that the right of second appeal should be confined to cases where a question of law is involved and such question of law is a substantial one.

Clause 40.—Under the Letters Patent, appeals lie, in certain cases, against the decision of a single Judge in a second appeal. Such appeal, in effect, amounts to a third appeal. For the purpose of minimising delay in the finality of adjudications, it is not desirable to allow more than two appeals. In the circumstances, new section 100A is being inserted to provide that there should be no further appeal against the decision of a single Judge in a second appeal.

Clause 41.—According to section 96, as proposed to be amended, a first appeal will not lie in the case of suits of the nature cognizable by the Court of Small Causes when the value of the subject-matter of the original suit does not exceed three thousand rupees. The said provision, however, permits a first appeal against the decree passed in a suit on a question of law. Section 102 is being amended with a view to prohibiting a second appeal in such a suit even on a question of law.

Clause 42.—In view of the change proposed to be made in section 100, section 103 requires a consequential change. Further, it is desirable to make it clear that section 103 will apply also where the failure to decide a question occurred not only in lower Appellate Court but also in the trial Court. The section is, therefore, being substituted by a new section.

Clause 48.—In view of the amendment proposed to be made to sections 91 and 92, a consequential amendment is being made in section 104.

Clause 44.—The amendment seeks to omit from section 105 certain words which are no longer necessary.

Clause 45.- Section 115 confers power of revision on the High Court in a case not subject to appeal thereto. It empowers the High Court to

call for the records of a case decided by an inferior Court and to interfere if the inferior Court has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so vested in it or has acted in the exercise of its jurisdiction illegally or with material irregularity. There are series of decisions of the Privy Council to the effect that the section applies to the irregular exercise or non-exercise of jurisdiction or illegal assumption of jurisdiction and is not directed against the erroneous conclusions of law or fact in which the question of jurisdiction is not involved. In spite of these decisions, the High Courts have continued to exercise a very wide and extensive jurisdiction under this section. The result is that the High Courts are flooded with applications for revision, most of which are frivolous and are filed with a view to delaying the conclusion of the litigation. The provisions of this section are particularly misused in the case of revision applications against interlocutory orders. Experience shows that often the cause of delay in the trial of suits is the entertainment of applications for revision against interlocutory orders, which invariably result in stay of proceedings. In fact, in many cases, the object of parties in moving the High Court for revision is to delay the progress of the proceedings. In view of the fact that adequate remedy is provided for in article 227 of the Constitution for correcting cases of excess of jurisdiction, or non-exercise of jurisdiction or illegality or material irregularity in the exercise of jurisdiction, the section is no longer necessary and is, therefore, being omitted.

Clause 46.—Under sub-section (3) of section 123, members of the Rules Committee are appointed by the Chief Justice. The section is being amended to provide that the members of the Rules Committee should be appointed by the High Court and not by the Chief Justice.

Clause 47.—Section 132 provides that women, who, according to the customs and manners of the country, ought not to be compelled to appear in public, shall be exempt from personal appearance in Court. Sub-section (2) of that section saves provisions for arrest. The paramount task of deciding cases on the oral evidence of an important party involves the personalised process of the Judge seeing the witness at the first hand. The Judge must have the advantage of observing the demeanour or at least the manner of delivery, of the witness, if he has to assess her credibility justly. Since nowadays seclusion of women is completely inconsistent with the social philosophy and the customs and manners of the present day have considerably changed, it is felt that no serious hardship is likely to be caused by the removal of the present exemption. The section is, therefore, being omitted.

Clause 48.—Section 135A of the Code deals with exemption of members of legislative bodies from arrest and detention under civil process and it prohibits, *inter alia*, the arrest and detention of members of a legislative body during the period of fourteen days before and after the meeting or sitting of such body. In conformity with the position obtaining in England in relation to the members of the House of Commons (*vide* articles 105 and 194 of the Constitution), the period of fourteen days is being raised to forty days.

Clause 49.—"Notaries" have power to administer oath under the Notaries Act, 1952. In the absence of statutory provision, Courts refuse to accept affidavits sworn before notaries. Section 139 is being amended

to include a specific provision permitting the swearing of affidavits before notaries.

Clause 50.—The applicability of section 141 to various types of proceedings has been the subject of controversy, particularly whether the section applies where an application to set aside *ex parte* proceedings or orders of dismissal for default are themselves dismissed for default or decided *ex parte*. The High Court of Bombay held that in such cases section 151 applies. The Supreme Court, however, came to a contrary conclusion. In the circumstances, section 141 is being amended to clarify that the section applies to proceedings under Order IX.

The question whether an application under article 226 of the Constitution is a "proceeding in a Court of civil jurisdiction" within the meaning of section 141 has been the subject-matter of a controversy. While the Andhra High Court holds that section 141 applies to such proceedings, the Allahabad, Calcutta, Madras and Punjab High Courts have held that section 141 does not apply to such proceedings. In the circumstances, it is being clarified that section 141 does not apply to proceedings under article 226 of the Constitution.

Clause 51.—Section 144 of the Code empowers the Court to order restitution when a decree is set aside or modified. There is conflict of judicial decisions as to whether the section applies in cases where a decree is set aside or modified otherwise than on an appeal, *e.g.*, in a separate suit. The Allahabad, Madras and Patna High Courts have taken the view that the section applies in such cases also. A contrary view has been taken by the Calcutta, Lahore and Punjab High Courts. The section is being amended to give effect to the first-mentioned view.

Clause 52.—Section 145 of the Code deals with enforcement of the liability of the surety. The section is being amended to incorporate therein an express provision as to the power of the Court to sell the property where property has been furnished as security.

Clause 53.—Under the Code, sometimes a party obtains an *ex parte* order on an application without informing the other party of his intention to make such an application. Where a party, with a view to preventing such *ex parte* orders being passed, intimates to the Court of his intention to have notice of an intended application by the adverse party, he may be authorised to do so. New section 148A is being inserted to provide for a caveat.

Clause 54.—Sections 152 and 153 authorise the correction of mistakes in judgments, decrees, etc. There is, however, a doubt as to which Court would be competent to amend a decree or order where an appeal against the decree or order has been summarily dismissed. The Bombay and Patna High Courts have taken the view that it is the original Court which has the power to amend the decree or order. The High Courts of Allahabad and Andhra have taken the contrary view. In view of the divergence of judicial opinion, new section 153A is being inserted empowering the Court which had passed the decree or order appealed against, to amend the decree or order where the appeal has been summarily dismissed.

The Code does not contain any provision as to the holding of proceedings in open Court and as to the power of the Court to hold proceedings

in camera. At present, the matter is dealt with under section 151. It would be appropriate to have an express provision on the subject on the lines of section 327 of the Code of Criminal Procedure, 1973. New section 153B is being inserted accordingly.

Clause 55—*Sub-clauses* (*i*) *and* (*ii*).—Order I of the Code deals with the parties to the suit. Rule 1 specifies who may be joined as plaintiffs and rule 3 specifies who may be joined as defendants. These two rules are being re-drafted to make the intention clear.

Sub-clause (*iii*).—New rule 3A is being inserted to empower the Court to order separate trials where joinder of defendants may embarrass or delay the trial of the suit.

Sub-clause (*iv*).—Rule 8 of Order I deals with representative suits. Under this rule, where there are numerous persons having the same interest in one suit, one or more of them may, with the permission of the Court, sue or be sued, on behalf of all of them. The rule has created a doubt as to whether the party representing others should have the same cause of action as the persons represented by him. The rule is being substituted by a new rule and an *Explanation* is being added to clarify that such persons need not have the same cause of action.

Sub-clause (*v*).—New rule 8A is being inserted to empower the Court to permit a person or body of persons interested in any question of law in issue in any suit to present his or its opinion before the Court and to take part in the proceedings in the suit.

Sub-clause (*vi*).—Rule 9 is being amended with a view to providing that the rule will not apply in the case of non-joinder of a necessary party.

Sub-clause (*vii*).—Sub-rule (2) of rule 10 is being substituted to make the rule comprehensive by providing that the Court may strike off the name of any person who has, for any reason, ceased to be a proper or necessary party or remove the name of any person who has been unnecessarily joined.

The amendment of sub-rule (5) of the said rule 10 is of a drafting nature.

Sub-clause (*viii*).—New rule 10A is being inserted to empower the Court to request any pleader to address it as to any interest which is not represented by any pleader.

Sub-clause (*ix*).—A minor drafting amendment is being made in rule 11.

Clause 56.—The scope of rule 6 of Order II is being widened so as to empower the Court to order separate trials where joinder of causes of action may cause embarrassment, delay or inconvenience.

Clause 57.—*Sub-clause* (*i*).—Rule 4 of Order III prohibits a pleader from acting for any person in any Court unless he has been appointed for the purpose by a document in writing. The rule is being amended to clarify the duration of such appointment. An *Explanation* is also being added to clarify what proceedings will be deemed to be proceedings in the suit.

Sub-clause (*ii*).—Rule 5 is being amended to provide that service of any process on a pleader will be deemed to be valid service if he has been duly appointed by the party to act in the suit.

Sub-clause (*iii*).—New sub-rule (3) is being inserted in rule 6 to provide for the appointment of an agent for the service of processes in cases where the party does not have a recognised agent or pleader on whom processes may be served.

Clause 58—*Sub-clause* (*i*).—The Bill seeks to add a proviso to sub-rule (1) or rule 1 of Order V to the effect that in appropriate cases the Court may direct the filing of written statement on the date of appearance and issue a suitable summons for the purpose. Failure to comply with such direction will be governed by the provisions contained in Order VIII, rule 10.

Sub-clauses (*ii*) *and* (*iii*).—Rule 15 provides that where in a suit the defendant cannot be found and has no agent to accept service, service may be made on any adult male member of his family residing with him. The rule is being substituted to provide that the service of the summons may be made on any adult member of the family, male or female, where the defendant is absent from his residence and there is no likelihood of his being found at the residence within a reasonable time. A consequential amendment is being made in rule 17.

Sub-clause (*iv*).—New rule 19A is being inserted to provide for the simultaneous issue of summons for service in the ordinary manner and by post.

Sub-clause (*v*).—Rule 20 is being amended with a view to providing that, where substituted service by advertisement in newspapers is ordered, the newspapers should be those circulating in the locality in which the defendant is last known to have resided, carried on business or personally worked for gain.

Sub-clause (*vi*).—Rule 20A is being omitted in view of the insertion of rule 19A.

Sub-clause (*vii*).—Rule 26 contains two types of provisions for service of summons intended for a defendant resident outside the territories to which the Code extends. It can either be sent to the Political Agent appointed by the Central Government or where the State Government has, in respect of any Court situated in any such territory, declared that service by such Court of summons issued under the Code shall be deemed to be valid service, by sending summons to such Court. In the latter case, the notification should be issued only by the Central Government which is exclusively in charge of External Affairs and not by the State Government, because the corresponding section for summonses received from countries outside India (section 29) leaves the power to issue notification thereunder to the Central Government.

Under rule 25, summons can be sent by registered post direct to the defendant and under rule 26, in certain cases, summonses can be sent to a Political Agent or Court specified in the rule or in the notification issued thereunder. New rule 26A is being inserted to further provide

for service of summons through diplomatic channels to an officer of the foreign country in certain cases.

Clause 59—*Sub-clause* (*i*).—Rule 2 of Order VI is being re-drafted so as to provide that each allegation should be contained in a separate paragraph in the pleadings.

Sub-clause (*ii*).—New rule 14A is being inserted, requiring a party to the suit to file an address at which service may be effected on him. Provision is also being made for stay of the suit or striking out a defence, as the case may be, in cases where the addresses filed is found to be false, fictitious or illusory.

Sub-clause (*iii*).—Rule 16 is being substituted by new rule, empowering the Court to strike out a matter which is unnecessary, scandalous, frivolous, vexatious or which is an abuse of the process of the Court.

Sub-clause (*iv*).—Rule 17 is being amended to expressly empower the Court to allow the plaint to be amended even in cases where the effect of the amendment would be to take away the suit from the jurisdiction of the Court and to return the plaint for presentation to the proper Court.

Clause 60—*Sub-clause* (*i*).—Detailed provision as to the particulars to be contained in the plaint are dealt with in Order VII. Rule 2 of that Order provides that in a suit for recovery of money, the plaint shall state the precise amount claimed. But that rule does not indicate what should be done where the suit is for movable property in the possession of the defendant or for a debt of which the value cannot be estimated. The rule is being amended to clarify that in such cases the plaint shall state the approximate amount or value of the movable property or debt, as the case may be.

Sub-clause (*ii*).—Rule 6 requires that a ground for exemption from limitation should be specifically pleaded in the plaint. Where, however, the ground for exemption from limitation is not specifically pleaded in the plaint, the question arises whether it can be pleaded later, and whether any new ground for exemption from limitation should be consistent with the ground already specified in the plaint. A proviso is being added to rule 6 to empower the Court to permit the plaintiff to reply on a new ground for exemption so long as that ground is not inconsistent with the ground specified in the plaint.

Sub-clause (*iii*).—Under rule 9, copies of plaint are to be filed on its admission. The rule is being amended to empower the Court to extend the time for the filing of such copies.

Sub-clause (*iv*).—New sub-rule (1A) is being inserted in rule 9 to make it clear that the plaintiff should pay the requisite fees for the service of summons on the defendants within the time fixed by the Court or extended by it from time to time.

Sub-clause (*v*).—There is a divergence of judicial opinion as to whether aplaint can be returned by the Court after a decree has been passed by the Court of first instance. An *Explanation* is being added to sub-rule (1) of rule 10 to clarify that the Appellate Court or Court of Revision

may, after setting aside the decree passed in the suit, return the plaint for presentation to the proper Court.

Sub-clause (*vi*).—New rule 10A is being inserted to obviate the necessity of serving summonses on the defendants where the return of plaint is made after the appearance of the defendant in the suit.

New rule 10B is being inserted with a view to empowering the Court hearing an appeal against an order for the return of plaint to direct that, instead of the plaint being returned, the suit may be transferred to the Court in which it should have been instituted. Further, provisions for obviating the necessity of serving summonses on the defendants, where the return of plaint was made after the appearance of the defendants in the suit, have also been included in the rule.

Sub-clause (*vii*).—There is a divergence of judicial opinion as to whether the time fixed by the Court under rule 11 may be extended by it under section 148. A proviso is being added to rule 11 to provide that the time fixed by the Court for the correction of the valuation or for the supply of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper within the time fixed by the Court and that refusal to extend the time would cause grave injustice to the plaintiff.

Clause 61—*Sub-clause* (*i*).—Provisions relating to counter-claim have been included in Order VIII. In view of such inclusion, a consequential change has been made in the heading of this Order.

Sub-clause (*ii*).—Rule 1 is being amended to make the filing of written statement obligatory. New sub-rule (2) is being inserted to provide for the filing of a list of documents by the defendant along with the written statement. In view of the provisions of rule 14 of Order VII, the plaintiff is compelled to produce the documents upon which he sues if they are in his possession or power. Provisions are also being made compelling the defendant to produce the documents upon which he claims a set-off or makes a counter-claim, if they are in his possession or power. Where the list is not filed along with the written statement, the Court is being empowered to grant some time for filing the same.

Sub-clause (*iii*).—Under rule 5, an allegation of a fact made in the plaint, if not denied, nor stated to be not admitted in the pleading of the defendant, is to be taken as admitted. There is a doubt as to whether this rule applies in a case where the defendant has not filed a pleading at all. New sub-rule (2) is being inserted to confer a discretion, in such cases, on the Court to treat the allegations in the plaint as admitted and to pronounce judgment on the basis of such allegations.

Sub-clause (*iv*).—New rules 6A to 6G are being inserted with a view to making the detailed provisions regarding counter-claims.

Sub-clauses (*v*) *and* (*vi*).—Rules 7 and 8 are being amended to include counter-claim therein.

Sub-clause (*vii*).—New rule 8A is being inserted to require the filing of the document or a copy thereof upon which a relief is claimed.

Sub-clause (*viii*).—Rule 9 is being amended to insert counter-claim therein.

Sub-clause (*ix*).—Rule 10 is being amended to provide for the consequences of non-filing of a written statement.

Clause 62—*Sub-clause* (*i*).—Rule 2 of Order IX provides for the dismissal of suit where summons is not served consequent on the plaintiff's failure to pay costs. It is proposed to enlarge the scope of the provision to cover failure to present copies of the plaint or concise statements.

Sub-clause (*ii*).—The amendment to rule 4 is consequential to the amendment to rule 2.

Sub-clause (*iii*).—Sub-rule (1) of rule 5 provides that where a plaintiff fails to apply for a fresh summons, after a summons on the defendant is returned unserved, the Court shall dismiss the suit. The period prescribed for application for a fresh summons is three months at present. The period is being reduced to one month so that delays may be reduced.

Sub-clause (*iv*).—Rule 6 empowers the Court to proceed *ex parte* where it is proved that the summons was duly served. The rule does not, however, make it clear whether the Court has a power to pass a decree, if it thinks fit, on the basis of the pleadings without formal evidence. Having regard to the paramount need to reduce delay, the rule is being amended to provide for the passing of a decree even in the absence of evidence on oath.

Sub-clause (*v*).—Rule 13 deals with setting aside of *ex parte* decrees against defendants. A new proviso is being added to the rule to ensure that the Court should not set aside an *ex parte* decree merely on the ground of irregularity in the service of the summons in a case where the defendant had adequate notice of the date of hearing of the suit.

Sub-clause (*vi*).—There is a divergence of judicial opinion as to whether an *ex parte* decree can be set aside under rule 13 after an appeal against such *ex parte* decree has been disposed of. An *Explanation* is being added to the rule to clarify that an *ex parte* decree cannot be set aside under this rule when an appeal against such decree has been disposed of.

Clause 63.—Rule 2 of Order X provides for the oral examination of any party appearing in person or present in Court or any other person able to answer any material questions. Rule 2 is being substituted to make it obligatory on the part of the Court to examine the party appearing in person or present in Court for elucidating the matters in controversy.

Clause 64—*Sub-clause* (*i*).—Rule 6 of Order XI relates to the raising of objections to an interrogatory. The rule is being amended to provide for objections being raised on the ground of privilege.

Sub-clause (*ii*).—Rule 15 entitles a party to give notice for inspection, etc., of documents "to which a reference has been made" in the pleadings

or affidavit of the opposite party. A question has arisen whether documents, which are merely entered in the list annexed to the plaint, are covered by this rule. One view is that the rule does not apply to such documents, as they are documents to which a reference is made in the pleadings. The contrary view is that the list is a part of the plaint for the purposes of this rule. The rule is being amended to clarify the position.

Sub-clause (*iii*).—The Supreme Court has held in State of Punjab *vs.* Sodhi Sukhdev Singh (1961) 2 S.C.R. 371, that rule 19(2), which confers power on the Court to inspect any document in relation to which any privilege is claimed, is to be read as subject to the provisions of section 162 of the Indian Evidence Act, 1872. The sub-rule is being amended to codify the decision of the Supreme Court.

Sub-clause (*iv*).—Under rule 21, where any party fails to comply with any order to answer interrogatories or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have the suit dismissed for want of prosecution; and if a defendant, to have his defence, if any, struck off, and be placed in the same position as if he had not defended. The rule further provides that a party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect. The rule is being amended to provide for the passing of the order after giving notice to the plaintiff or defendant, as the case may be, and after giving him a reasonable opportunity of being heard.

Sub-clause (*v*).—New sub-rule (2) is being inserted to provide that a fresh suit would be barred when a suit is dismissed under this rule.

Clause 65—*Sub-clause* (*i*).—New rule 2A provides that a document, if not denied, should be taken as admitted unless the Court otherwise directs and the person failing unreasonably to admit such document should be burdened with penal costs.

Sub-clause (*ii*).—Under rule 6, where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on the admitted claim. The object of the rule is to enable a party to obtain speedy judgment at least to the extent of the relief to which, according to the admission of the defendant, the plaintiff is entitled. The rule is wide enough to cover oral admissions. The rule is being amended to clarify that oral admissions are also covered by the rule.

Clause 66—*Sub-clause* (*i*).—Rule 1 of Order XIII is being amended to provide that documentary evidence should be produced at or before the settlement of issues.

Sub-clause (*ii*).—Rule 2 provides that documents which should have been produced at an earlier stage shall not be received at any subsequent stage of the proceedings, unless the Court is satisfied that there is good cause for non-production of such documents at the earlier stage. The rule is being amended to clarify that the documents which are produced for cross-examination shall not fall within the ambit of the rule.

Sub-clause (*iii*).—Under sub-rule (1) of rule 9, where a person who has produced a document wants its return during the pendency of the suit, the Court may allow such return if such person delivers to the proper officer a certified copy of the document and gives an undertaking as provided therein. This rule creates difficulty in respect of cases where the document has been produced by a witness. The witness cannot get reimbursement in respect of the expenses incurred by him for taking a certified copy. The rule is being amended to give facilities to the witnesses of putting in a plain copy of documents produced by them so that the original documents could be returned after comparison and certification of the same.

Clause 67—*Sub-clause* (*i*).—Sub-rule (5) of rule 1 of Order XIV is being amended to make it clear that the examination of parties refers to the examination under rule 2 of Order X.

Sub-clause (*ii*).—Rule 2 is being substituted to provide that, although a suit can be disposed of on a preliminary issue, the Court shall ordinarily pronounce judgment on all issues; but where any issue relates to the jurisdiction of the Court or a bar created by any law for the time being in force, the Court may postpone settlement of the other issues until the preliminary issue with regard to the jurisdiction of the Court or such bar has been determined and the Court may deal with the suit in accordance with the determination of such preliminary issue.

Clause 68.—Rule 2 of Order XV is being amended to provide that whenever a judgment is pronounced under that rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date of the judgment.

Clause 69—*Sub-clause* (*i*).—Under Order XVI, rule 1, at any time after the suit is instituted, the parties may obtain, on application to the Court, or to such other officer as may be appointed by the Court, summonses to persons whose attendance is required either to give evidence or to produce documents. There is some doubt as to whether, in view of the use of the words "may obtain", the Court is under an obligation to issue the summons irrespective of any other considerations. The rule is being substituted to provide that the application for the issue of summons should indicate the purpose for which the summons is being obtained. The substituted rule also lays down the procedure for the filing of a list of witnesses by the parties and provides that a person not mentioned in the list shall not be produced as a witness without the permission of the Court.

Sub-clause (*ii*).—New rule 1A empowers a party to the suit to bring any witness to give evidence or to produce documents without obtaining any summons.

Sub-clause (*iii*).—New sub-rule (4) is being inserted in rule 2 to provide that where the summons is served directly by a party, the expenses of the witness should be paid to the witness by the party or his agent and need not be deposited in the Court.

Sub-clause (*iv*).—New rule 7A is being inserted to facilitate the service of summons by a party and provides for the procedure for such service.

Sub-clause (*v*).—Amendment of rule 8 is consequential to the provisions of rule 7A and is intended to exclude from the scope of the rule every summons handed over to the party for service.

Sub-clause (*vi*).—Rule 10 is being amended to provide that where a summons has been issued either to give evidence or to produce any document, and the person so summoned fails to attend or to produce the document, the person effecting service should always be examined by the Court, where the certificate of service is not verified by an affidavit.

Sub-clause (*vii*).—Rule 12 empowers a Court to impose a fine upon a witness who has disobeyed summons for attendance in Court. A doubt has arisen as to whether, before the power under this rule can be exercised, it is essential that the Court should issue a proclamation under Order XVI, rule 10(2), or a warrant under Order XVI, rule 10(3) or an order of attachment of property under Order XVI, rule 10(3). There are conflicting opinions and one view is that a fine under rule 12 cannot be imposed unless property of the witness has been attached. The other view is that no fine can be imposed unless and until there has been proclamation which has been disobeyed. According to the third view, either a proclamation or a warrant or an attachment should have been ordered before a fine is imposed under rule 12. There is yet another view holding that no such order is necessary before the imposition of fine. The rule is, therefore, being amended to provide that in cases where none of the three processes has been issued, notice to show cause should be given to the person who has so disobeyed the summons before any fine is imposed upon him.

Sub-clause (*viii*).—Under rule 14, the Court has a power to summon as a witness any person other than a party to the suit who has not been called in as a witness by any party either to give evidence or to produce documents. The rule does not, however, confer any express power on the Court to summon the party to the suit. The rule is being amended to give the Court an express power to summon a party to the suit.

Sub-clauses (*ix*) *and* (*x*).—In view of the improved facilities for transport, rule 19 is being amended to increase the distances specified therein and also to provide that where air transport is available and the air fare is paid to the witness, he may be required to attend in person irrespective of the distance of the place from which he is called upon to appear.

Clause 70.—New Order XVIA provides for the attendance of prisoners to give evidence except where they are physically unfit to do so. "Prison" has been defined to include any reformatory, borstal institution or other institution of a like nature. Attendance of prisoners would not, however, be ordinarily required where the prison is situated at a distance of more than twenty-five kilometres from the Court-house, unless the Court is satisfied that the examination of the prisoner on commission will not be adequate.

Clause 71—*Sub-clause* (*i*).—Proviso to rule 1(2) of Order XVII provides that, when the hearing of evidence has once begun, such hearing shall be continued from day-to-day. The said provisions are being made

more restrictive, so that once the stage of evidence has been reached, an adjournment should be granted only for unavoidable reasons. A few other restrictions are also being imposed on the grant of adjournments.

Sub-clause (*ii*).—Rule 2 provides for the procedure to be adopted where parties fail to appear on a day fixed. At present three courses are open to the Court, namely :—

(*a*) to act under Order IX, though it is not bound to do so;

(*b*) to grant further adjournment; or

(*c*) to make such other order as it deems fit.

The words "such other order" have been differently interpreted by different High Courts. In view of the obscurity of the present position, a new *Explanation* is being added to the rule to make the position clear by empowering the Court to proceed with a case even in the absence of a party where evidence or a substantial portion of the evidence of such party has already been recorded.

Sub-clause (*iii*).—Rule 3 provides that the Court may proceed with a case notwithstanding the failure of either party to produce evidence. There are different interpretations regarding the scope of this rule. The amendment is intended to define the scope of rule 3, so as to make it clear that action can be taken by the Court when the parties are present as well as when they are absent.

Clause 72—*Sub-clause* (*i*).—The amendment of rule 2 of Order XVIII seeks to empower the Court to direct or permit a party to examine any witness at any stage.

Sub-clause (*ii*).—New rule 3A is being inserted to provide that a party who wishes to be examined as a witness should first offer himself for examination before the other witnesses are examined.

Sub-clauses (*iii*) *and* (*iv*).—Rules 5 and 8 are being amended with a view to making clear that, in a case in which appeal is allowed, the evidence should be taken down in writing by the Judge or in his presence and under his personal superintendence by any other person, or may be dictated by the Judge directly on a typewriter or may be mechanically recorded; as, for example, by a tape recorder.

Sub-clause (*v*).—Rule 9 is being substituted to provide that where English is not the language of the Court and the parties or their pleaders do not object to the evidence given in English, being taken down in English, the Judge may take down such evidence in English or cause it to be taken down.

Sub-clause (*vi*).—Rule 13 is being substituted to provide that, in cases in which no appeal is allowed, the Judge shall make or dictate directly on a typewriter or cause to be mechanically recorded, a memorandum of the substance of the deposition of the witnesses.

Sub-clause (*vii*).—Omission of rule 14 is of a consequential nature.

Sub-clause (*viii*).—New rule 17A is being inserted to provide that where a party satisfies the Court that, notwithstanding the exercise of

due diligence by him, any evidence was not within his knowledge or could not have been produced by him at the time when the evidence was being taken, the Court may permit him to produce such evidence at a later stage on such terms as may appear to the Court to be just.

Clause 73—*Sub-clause* (*i*).—Rule 1 of Order XX is being amended to provide that the Judge need not read out the full judgment and that it would suffice if the final orders are pronounced. However, the new sub-rule (2) requires a copy of the whole judgment to be made available for the perusal of the parties.

Sub-clause (*ii*).—Under rule 2, a Judge may pronounce a judgment written, but not pronounced, by his predecessor in office. There is a divergence of opinion as to the interpretation of the expression "may". One view is that the said rule casts a duty on the succeeding Judge and it is mandatory upon him to pronounce the judgment written by his predecessor and he cannot reopen the whole matter. But the contrary view has been taken in some cases. Accordingly, the rule is being amended to make it clear that it is mandatory for the succeeding Judge to pronounce the judgment written by his predecessor in office.

Sub-clause (*iii*).—New rule 5A is being inserted to empower the Court to acquaint unrepresented litigants as to the right of appeal against the judgment adverse to them and the period of limitation therefor.

Sub-clause (*iv*).—Rule 6 is being amended to provide that the decree should contain the registered address of the parties.

Sub-clause (*v*).—New rule 6A is being inserted with a view to ensuring that the delay in the preparation of the decree may not affect the right of a party to file an appeal and further that the last paragraph of the judgment should precisely indicate the reliefs granted so that, in the absence of a decree, an appeal may be preferred on the basis of that paragraph and that paragraph may also be used for the purpose of the execution of the decree.

New rule 6B provides for the furnishing of copies of type-written judgments, where practicable, on payment of the specified charges.

Sub-clause (*vi*).—Rule 11, which deals with instalments in cases of money decrees, consists of two parts. Under sub-rule (1), the Court can, for sufficient reason, order that the money be paid by instalments, or may order postponement of recovery. This power is to be exercised by passing a separate order, unless it is incorporated in the decree. The rule is being amended to provide that—

(*i*) the order should be incorporated in the decree, and

(*ii*) the power should be exercised after hearing the parties who have appeared personally or by pleader at the last hearing before the judgment.

Sub-clause (*vii*).—New rule 12A seeks to provide that the decree for specific performance of contracts for the sale or lease of immovable property should specify the period within which the purchase-money or other amount is to be paid.

New rule 12B seeks to provide that where the judgment-debtor neglects or refuses to execute a document or endorse a negotiable instrument as required by the decree for the purpose, the decree-holder may prepare the draft of such document or endorsement in accordance with the terms of the decree and deliver the same to the Court for execution in accordance with the procedure laid down in the new rule.

Sub-clause (*viii*).—The amendment to rule 19 is consequential to the proposed inclusion of rule 6A in Order VIII, relating to counter-claims.

Clause 74.—Order XXA makes specific provisions with regard to the power of the Court to award costs in respect of certain items of expenditure, including expenses in relation to notices, or typing charges and expenses of witnesses and in obtaining copies, etc.

Clause 75.—*Sub-clause* (*i*).—Under rule 1 of Order XXI, money payable under a decree is required to be paid either into the Court whose duty it is to execute the decree or out of Court to decree-holder or otherwise as the Court which made the decree directs. It is felt that an opportunity should be given to the judgment-debtor to send to the Court the amount due under a decree by postal money order or through a bank or to pay out of Court to the decree-holder through a Bank or by postal money order or by any other mode which would ensure written evidence of the payment. The rule is being substituted with a view to enabling such payment.

Sub-clause (*ii*).—Divergent views have been expressed by different High Courts as to whether rule 2 applies to all kinds of decrees or only to decrees under which any money is payable. The rule is being amended to make it clear that the rule applies to decrees of all kinds.

New sub-rule (2A) is being inserted to provide that any payment of money under a decree or adjustment of a decree shall not be recorded by the Court unless it is either made in accordance with rule 1 or is proved by documentary evidence or is admitted by the decree-holder.

Sub-clause (*iii*).—Under rule 5, where a decree is sent to another Court for execution and such other Court is within the same district as the Court which passed the decree, then such decree can be transferred to the other Court directly, but where the transferee Court is situated in a different district, the transfer is to be made through the District Court. Routing the transfer of decrees through the District Court adds to the delay in the execution of decrees. The rule is, therefore, being substituted to provide for the transfer of decrees directly to the other Court, and if the other Court has no jurisdiction to execute the decree, a duty has been imposed on that Court to transfer the decree to the Court having jurisdiction to execute it.

Sub-clause (*iv*).—Rule 11(2) (*j*) (*ii*) provides for mentioning "attachment and sale" or "sale without attachment" in the application for the execution but does not expressly mention simple attachment. The rule is being amended to provide for mentioning simple attachment also.

Sub-clause (*v*).—Section 51 provides that the Court should be satisfied with regard to certain grounds before a person can be arrested and

detained in prison in execution of a decree. Consequently, the application for the execution of the decree by arrest and detention of the judgment-debtor should state the grounds for the arrest. New rule 11A is being inserted to achieve this object.

Sub-clause (vi).—An *Explanation* is being added to rule 16 to make it clear that the provisions of the rule shall not affect section 146 and a transferee of the rights in the property which is the subject-matter of the suit may apply for execution of the decree without a separate assignment of the decree.

Sub-clause (vii).—Rule 17 relates to the procedure on receipt of applications for execution. The present sub-rule (1) provides that the Court may reject the application or allow the defect to be remedied. Thus where an application is defective, discretion is left to the Court either to allow or to reject the application. In order to reduce the inconvenience to the parties, the rule is being amended to make it obligatory on the part of the Court to give an opportunity to the applicant to remedy the defect. Provision has also been made for the determination of the correct amount before rejecting or proceeding with such application.

Sub-clause (viii).—Rule 22 provides for the issue of show cause notice in relation to execution in certain cases. Such notice is mandatory where there is a gap of over one year. This is being increased to two years.

Where an application for execution is made and the party to the decree has been adjudged insolvent, it appears necessary to provide for the issue of a notice under sub-rule (1) to the assignee or receiver in an insolvency. New clause (c) is being inserted in sub-rule (1) for that purpose.

Sub-clause (ix).—A difficulty arises where a sale of judgment-debtor's property is held after his death without bringing his legal representatives on record. Such a sale does not bind the legal representatives of the deceased judgment-debtor. New rule 22A is being inserted to provide that where the property is sold in execution, the sale shall not be set aside merely by reason of the death of the judgment-debtor between the date of issue of proclamation of sale and the date of the sale notwithstanding that his legal representatives were not substituted. But if the legal representatives are prejudiced, the Court may set aside the sale.

Sub-clause (x).—Under rule 24(3), the process issued by a Court (in execution) should specify the date on or before which it shall be executed. After the date fixed for return, execution is not valid. Sub-rule (3) is, therefore, being substituted to provide that in every process a date shall be specified on or before which it shall be executed and a date should also be specified on or before which it shall be returned to the Court. But no process shall be deemed to be void if a day for its return is not specified therein.

Sub-clause (xi).—The Court executing the decree may, under rule 26(3), require a security from the judgment-debtor or impose other conditions on him before granting stay. It is considered that in such cases where the judgment-debtor applies for stay of execution, it should be mandatory for the Court to obtain security from the judgment-debtor.

Sub-clause (*xii*).—There is a conflict of decisions on the question as to whether the Court to which a decree is transferred for execution can act under rule 29. The rule is being amended to resolve such conflict. A proviso is also being added to the effect that where stay is granted in relation to a decree for payment of money without requiring security, the Court shall record its reasons for so doing.

Sub-clause (*xiii*).—Rule 31 provides, *inter alia*, for compensation in lieu of delivery of attached movable property, where the attachment has remained in force for six months. The amendment seeks to reduce the period to three months.

Sub-clause (*xiv*).—Rule 32 provides for the execution of a decree for specific performance of a contract, restitution of conjugal rights or an injunction by the attachment of the property of the judgment-debtor. The rule further provides that where the attachment has remained in force for one year, and the judgment-debtor has not obeyed the decree, the attached property may be sold and compensation awarded to the decree-holder. The amendment seeks to reduce this period of one year to six months.

Sub-clause (*xv*).—Rule 34 is being omitted in view of the amendment of Order XX with regard to the proceedings for the execution of a document or for the endorsement of a negotiable instrument.

Sub-clause (*xvi*).—Rule 41 relates to the examination of judgment debtor as to his property. It would facilitate matters if the Court has the power to call for an affidavit of the assets of the judgment-debtor. The rule is being amended accordingly.

New sub-rule (3) is being added to rule 41 to provide that in case of disobedience of any order made under sub-rule (2), the Court may direct the detention of the defaulter in civil prison for a term not exceeding six months.

Sub-clause (*xvii*).—New rule 43A is intended to make provision regarding enforcement of the liability against the person to whom attached movable property is entrusted. The new rule makes such custodian liable to the person interested in the property and provides for the enforcement of the liability against him.

Sub-clause (*xviii*).—New rules 46A to 46I lay down procedure in garnishee cases. They mainly follow the amendments which have already been made by the Calcutta High Court.

Sub-clause (*xix*).—Rule 48 relates to attachment of salary and allowances of servants of Government or a local authority. The amendment seeks to cover also the employees of corporations engaged in trade or industry and established by statute or Government companies so as to place them on the same footing as Government servants.

Sub-clause (*xx*).—New rule 48A provides for the procedure of attachment of salary and allowances of the employees employed by private employers.

Sub-clause (*xxi*).—There is a controversy as to whether rule 50 appies to joint family firms. The High Courts of Calcutta and Orissa

hold a view that it does not. A contrary view is discernible from the decisions of the Patna and Punjab High Courts. New sub-rule (5) is being inserted to make it clear that the rule does not apply to a Hindu undivided family.

Reference in rule 50 to section 247 of the Contract Act, 1872, which has since been repealed, is being substituted by section 30 of the Indian Partnership Act, 1932.

Sub-clause (*xxii*).—Rule 53 deals with attachment of decrees. When a decree is attached in execution of another decree, the Court in which such execution is taken issues a notice to the Court which passed the decree sought to be attached requesting the latter Court to stay the execution of such decree until the decree-holder or the judgment-debtor of the decree which is under execution applies to the latter Court for execution of the decree which is attached. The rule is being amended to provide that the judgment-debtor of the decree under execution can apply for execution of the attached decree (of which he is the decree-holder) only after the consent of the decree-holder at whose instance the decree was attached, or the permission of the Court, is obtained.

Sub-rule (6) provides that where a decree is attached, no payment or adjustment of the attached decree made by the judgment-debtor in contravention of the order of attachment after receipt of the notice thereof shall be recognised. The rule is being amended to provide that the prohibition would apply equally to any payment or adjustment made with the knowledge of the attachment.

Sub-clause (*xxiii*).—Rule 54 provides for the attachment of immovable property and the procedure for proclamation of such attachment. In order to minimise the delay in execution proceedings, new sub-rule (1A) is being inserted to provide that the order shall also specify a date on which the judgment-debtor is to attend Court in order to take notice of the date fixed for settling the terms of the proclamation.

Sub-rule (2) is being amended to provide that in the case of a land situate in a village, a copy of the order should be affixed in the office of the panchayat, if any, constituted for that village. This is intended to secure adequate publicity with regard to the attachment.

Sub-clause (*xxiv*).—Where an application for execution is dismissed under rule 57 either by reason of the decree-holder's default or otherwise, a question arises whether an attachment already effected in execution of the decree ceases or not. Rule 57 covers the cases where a petition for execution is dismissed on account of the decree-holder's default but does not cover cases where the application is dismissed for any other reason. Hence, the rule is being amended to empower the Court to direct in each case of dismissal whether the attachment is to be regarded as continuing or not.

Sub-clause (*xxv*).—Rules 58 to 63 deal with claims and objections in execution. At present the adjudication in execution has a limited scope and the matter can be further agitated by way of a regular suit. In order to prevent protraction of litigation, it is thought desirable to have all questions (including questions of title) settled finally in the execution proceeding itself. This would be in keeping with the tenor of section 47

wherein it is provided that all questions arising between parties to the suit relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. Rules 58 to 63 are being substituted accordingly.

Sub-clause (*xxvi*).—Certain difficulties have been caused on account of the mistakes occurring in the estimated value of the property as stated in the proclamation of sale. Rule 66 is being amended to provide that the Court should state merely the value estimated by the parties and should not vouch for the accuracy of such value. It also provides that where notice of the date for settling the terms of proclamation of the sale has been given to the judgment-debtor under rule 54, it shall not be necessary to give him a fresh notice under this rule unless the Court otherwise directs.

Sub-clause (*xxvii*).—Rule 68 is being amended to reduce the interval between the proclamation of the sale and actual sale.

Sub-clause (*xxviii*).—Rule 69, which deals with adjournment or stoppage of sale, provides, *inter alia*, that where the sale is adjourned for a longer period than seven days, fresh proclamation shall be made unless the judgment-debtor consents to waive it. In order to avoid the necessity of repeated proclamations, the rule is being amended to enlarge the said period of seven days to thirty days.

Sub-clause (*xxix*).—New rule 72A is being inserted to provide that when leave is granted to the mortgagee decree-holder to bid for the sale, a reserve price should be fixed so that the mortgagee may not take an undue advantage by purchasing the mortgaged property at a lower price and then pursuing other remedies to recover the balance of the amount of the decree.

Sub-clause (*xxx*).—Rule 89 deals with the setting aside of sale on deposit of the amount specified in the proclamation of sale less the amount already paid and for payment to the purchaser five per cent. of the purchase-money. The words "any person either owning such property or holding an interest therein by virtue of a title acquired before such sale" have given rise to a conflict of decisions by the various High Courts. The rule is being amended to make it clear that any person claiming any interest as existing at the time of the sale or at the time of making the application can avail of the benefit of this rule.

Sub-clause (*xxxi*).—There is a conflict of decisions as to whether an auction-purchaser can apply to set aside a sale under rule 90. The words "or the purchaser" have been inserted in the rule to make it clear that the auction-purchaser can also apply to set aside the sale.

The rule is also being amended to provide that a sale shall not be set aside on the ground of an irregularity or fraud unless the applicant has sustained a substantial injury by reason of such irregularity or fraud.

It is further being provided that no application to set aside the sale shall be entertained on any ground which the applicant could have taken on or before the date on which the proclamation of sale was drawn up.

In view of the divergence of opinion as to whether absence of, or irregularity in, attachment is a defect in the publication or the conduct

of sale, an *Explanation* is being added to the effect that mere absence of, or defect in, the attachment of the property sold shall not, by itself, be a ground for setting aside the sale.

Sub-clause (*xxxii*).—Sometimes the amount deposited under rule 89, is found to be short owing to a genuine clerical or arithmetical mistake on the part of the depositor. Rule 92 is being amended to provide that the Court may, in such cases, allow the amount to be made good within the time to be fixed by it and whereupon the sale can be set aside.

Rule 92 is being amended to provide that where a third party challenges the judgment-debtor's title by filing a suit against the auction-purchaser, the decree-holder and the judgment-debtor should be necessary parties to that suit and if the suit is decreed, the Court shall direct the decree-holder to refund the money to the auction-purchaser. With a view to avoiding complications with regard to limitation, the rule further provides that where a decree is passed in favour of such third party, the original execution proceeding will become revived at the stage where the sale was ordered unless the Court otherwise directs.

Sub-clause (*xxxiii*).—The general scheme of rules 97 to 103 has been altered on the lines of the amendments proposed to rules 58 to 63. The main feature is that questions (including a question relating to right, title or interest in the property) arising between the parties to a proceeding under rule 97 or rule 99 is to be determined in execution proceeding itself and not left to be decided by way of separate suit. Rule 98 has been amplified to cover cases of resistance, etc., by a person acting under any instigation by the judgment-debtor.

Sub-clause (*xxxiv*).—New rule 104 is being added to save the results of any suit which may be pending on the date of commencement of the proceeding under rule 101 or rule 103. The new rule provides that every order under rule 101 or rule 103 shall be subject to the result of any suit that may be pending on the date of commencement of the proceeding in which such order is made, if in such suit the party against whom the order is made has sought to establish a right which he claims to the present possession of the property.

Sub-clause (*xxxv*).—Owing to the inapplicability of the provisions of section 141 to execution proceedings, Order IX does not apply to execution proceedings. The result has been that the Courts have found it difficult to decide the circumstances in which an application for execution can be dismissed for non-appearance or if a Court has dismissed an application for non-appearance, where the Court in the absence of any specific provisions relating to restoration of the execution proceeding, can restore such application. They cannot be so restored because Order IX, rule 9, does not apply to execution proceedings. Rules 105 and 106 are being inserted to deal with such cases.

Clause 76—*Sub-clause* (*i*).—Rule 4 of Order XXII provides for the substitution of the legal representatives of the deceased defendants. The question arises as to how far the ignorance of the plaintiff as to the death of the defendant should prejudicially affect the plaintiff. Rule 4 is being substituted to provide that the plaintiff should have an opportunity to pray for an extension of the time limit for the substitution of the legal representatives of the deceased defendant if he can establish that he was ignorant of the death of the defendant.

Sub-clause (*ii*).—New rule 4A is being inserted to provide that the plaintiff should not suffer where the deceased defendant has no legal representative or his legal representative is not traceable. New rule 4A enables the representation of the estate of the deceased defendant in the suit so that the plaintiff may proceed with the suit.

Sub-clause (*iii*).—Rule 5 deals with the determination of the question as to legal representatives. The amendment seeks to enable the Appellate Court to direct a subordinate Court to inquire into, and give its findings on, disputes as to who is legal representative of a deceased party.

Sub-clause (*iv*).—Under sub-rule (1) of rule 9, a fresh suit is barred when a suit abates or is dismissed for the non-substitution of the legal representatives of any of the deceased parties. It is not, however, clear as to whether the cause of action of the abated suit may be invoked as a defence in a subsequent suit. An *Explanation* is being added to the rule to provide that abatement or dismissal of the suit should not operate as *res judicata*.

Sub-clause (*v*).—New rule 10A is being inserted to impose an obligation on the pleaders of the parties to communicate to the Court the death of the party represented by him.

Clause 77—*Sub-clause* (*i*).—Rule 1, Order XXIII, as it now stands, provides for two kinds of withdrawal of suit, namely, (*i*) absolute withdrawals, and (ii) withdrawal with the permission of the Court to institute a fresh suit on the same cause of action. The first category of withdrawal is governed by sub-rule (1) and the second category is governed by sub-rule (2). Experience shows that the use of the word "withdrawal", in relation to both the categories of withdrawals, creates a confusion. The rule is being amended to avoid such confusion.

It is proposed to make a specific provision to the effect that a suit cannot be withdrawn by the next friend acting on behalf of the minor without the leave of the Court. It is further provided that where an application for such leave is made, it shall be accompanied by an affidavit of the next friend as well as a certificate of the pleader to the effect that the withdrawal of the suit is for the minor's benefit.

Sub-clause (*ii*).—New rule 1A is being inserted to provide for the circumstances where a defendant may be allowed to transpose as a plaintiff where the suit is withdrawn or abandoned by the plaintiff.

Sub-clause (*iii*).—It is provided that an agreement or compromise under rule 3 should be in writing and signed by the parties. This is with a view to avoiding the setting up of oral agreements or compromises to delay the progress of the suit.

The words "lawful agreement of compromise" in rule 3 have given rise to a conflict in the matter of interpretation. One view is that agreements which are voidable under section 19A of the Contract Act are not excluded. While this stand has been taken by the High Courts of Allahabad, Calcutta, Madras and Kerala, a contrary view has been expressed by the High Courts of Bombay and Nagpur. An *Explanation* has, therefore, been added to the rule to clarify the position. A proviso has also been added

to clarify that no adjournment should ordinarily be granted where a decision is necessary as to whether an adjustment or satisfaction has or has not been arrived at.

In view of the words "so far as it relates to the suit" in rule 3, a question arises whether a decree which refers the terms of a compromise in respect of matters beyond the scope of the suit is executable or whether the terms of the decree relating to the matters outside the suit can be enforced only by a separate suit. The amendment seeks to clarify the position.

Sub-clause (*iv*).—In a recent Mysore case, it was held that where a compromise decree passed by a Court of competent jurisdiction contains a term which is opposed to law or public policy, but the decree has not been set aside in proper proceedings, the decree operates as *res judicata*. The Madras and Patna High Courts have, however, taken a different view. New rule 3A seeks to resolve the conflict between the decisions of the different High Courts.

It is felt that in a representative suit, leave of the Court should be obtained before a compromise is recorded and before such leave is given, notice to the interested parties should be given. New rule 3B seeks to achieve this object.

Clause 78—*Sub-clauses* (*i*) *and* (*ii*).—Order XXIV deals with commissions issued by the Courts. Commissions are of four kinds, namely, (i) to examine witnesses, (ii) to make local investigations, (iii) to examine accounts and (iv) to make partitions of immovable property. Rule 1 provides for the issue of a commission for the examination of witness on interrogatories or otherwise. An order for examination of a witness on interrogatories is sometimes issued when the examination of such witness should really be comprehensive. The rule is being amended to provide that examination on interrogatories should be ordered only in special cases. It is also being provided that for proving the sickness or infirmity of the witness, a certificate signed by a qualified registered medical practitioner should be accepted.

Sub-clause (*iii*).—The amendment of rule 7 is of a drafting nature.

Sub-clause (*iv*).—Consequent on the amendment of section 75, new rules 10A to 10C are being inserted to provide for the issue of commissions for scientific investigation, performance of a ministerial act, or sale of movable property.

Sub-clause (*v*).—New rule 16A is intended to provide that where a question put to a witness is objected to in proceedings before the Commissioner, the Commissioner shall take down the question, the answer, the objections and the name of the person so objecting. Any such answer can be read as evidence in the suit only by the order of the Court to that effect.

Sub-clause (*vi*).—A proviso is being added to sub-rule (1) of rule 17 to clarify that it will not be open to the commissioner to impose penalties, but may apply to the Court for the imposition of penalties.

Sub-clause (*vii*).—New rule 18A provides that the provisions with regard to issue of commissions shall apply to execution proceedings as well.

Sub-clause (*viii*).—The amendment of rule 22 is a consequential one.

Clause 79—*Sub-clause* (*i*).—In a suit against the Government or a public officer, the Court is required, under rule 5 of Order XXVII, to allow a reasonable time for the necessary communication with the Government through the proper channel with regard to the subject-matter of the suit to enable the Government to issue instructions to the Government Pleader to appear and answer on behalf of the Government or the public officer. It is felt that a period of two months should normally suffice and in the interest of expedition, the law itself should provide the time limit. The rule is being amended accordingly.

Sub-clause (*ii*).—New rule 5A is being inserted to provide that when a suit is filed against a public officer for anything done by him in his official capacity, the Government should also be made a party so that the question of the liability of the State is decided in that very suit.

New rule 5B is being inserted to ensure that litigations between the Government and the citizens may be avoided by taking positive steps to settle the matter.

Clause 80—*Sub-clause* (*i*).—The heading of Order XXVIIA is being amended to clarify that the provisions of the Order will also apply to suits involving a question as to the validity of any statutory instrument.

Sub-clause (*ii*).—New rule 1A provides that when the vires of a statutory instrument are challenged in a suit, the authority issuing the statutory instrument should be made a party to the suit.

Sub-clause (*iii*).—New rule 2A ensures that the Government or other authority issuing the statutory instrument is given an opportunity to join as a party in such cases.

Sub-clause (*iv*).—The amendment of rule 3 is of a consequential nature.

Sub-clause (*v*).—An *Explanation* is being added to define the expression "statutory instrument".

Clause 81—*Sub-clause* (*i*).—Order XXX deals with suits by or against firms. The proviso below sub-rule (3) of rule 2 is being substituted to provide that the names of the partners of firms disclosed in the manner stated in sub-rule (1) of rule 2 should appear in the decree.

Sub-clause (*ii*).—When a person denies that he is a partner of a firm and appears under protest under rule 8, the plaintiff may either disregard his appearance and serve summons on the other partners or may insist that the appearance under protest be struck down. The option is entirely with the plaintiff. The defendant cannot resist the claim on merits independent of the firm. It is felt that a person appearing under protest should be entitled to have the question of the existence or otherwise of his partnership decided. If he is held to be a partner, it does not preclude him from denying the liability of the firm. On the other hand, if he is

held not to be a partner, the plaintiff can serve summons on the defendant firm in an appropriate manner. Rule 8 is being amended accordingly.

Sub-clause (*iii*).—There is a conflict of decisions as to whether "person" in rule 10 would include a Hindu undivided family. In the circumstances, rule 10 is being amended to clarify that it applies also to a Hindu undivided family carrying on business under any name.

Clause 82—*Sub-clause* (*i*).—The question whether the provisions of Order XXXII apply to all kinds of suits including those in respect of which the age of majority is governed not by the Indian Majority Act but by the personal law, has been the subject-matter of various judicial pronouncements. The case law on the subject expresses divergent views. In suits falling under the personal law, the meaning of the word "minor" is governed by personal law, according to the High Courts of Bombay and Calcutta. On this view, the "minor" can sue without next friend in such cases if he is a major under the personal law. A contrary view has been expressed by the Madras High Court on the ground that the capacity to sue is purely a question of procedure. Therefore, they held that the provisions of this Order apply to all cases. The amendment seeks to give effect to the former view.

Sub-clause (*ii*).—New rule 2A is intended to confer on the Court the power to order the next friend to furnish security for costs of the defendant. The object of the amendment is to discourage vexatious litigation by the next friends of minors.

Sub-clause (*iii*).—Under rule 3, a guardian for the suit can be appointed for a minor defendant only after notice to such minor. The amendment seeks to provide that the issue of such notice to the minor will be discretionary and that where there is no father, notice should also be given to the mother if she is alive.

Sub-clause (*iv*).—There is a divergence of opinion as to whether a minor, who is properly represented in a suit, can subsequently institute a suit to set aside a decree passed against him in the former suit. New rule 3A is being inserted to clarify that where the next friend of the minor has an adverse interest to that of the minor and the minor is prejudiced by reason of such adverse interest, the decree passed in the former suit may be set aside.

Sub-clause (*v*).—Rule 4 deals with the appointment of guardian for the suit. It provides, *inter alia*, that no person shall without his consent be appointed as guardian for the suit. To avoid any ambiguity and to eliminate disputes, the rule is being amended to provide that such consent must be in writing.

Power is also being conferred on the Court to order payment out of the minor's property, of the costs of any officer of the Court who is appointed as guardian.

Sub-clause (*vi*).—Rule 6 provides that the Court shall, while granting permission to the next friend or guardian to receive the property of the minor, require such security as it may specify to be furnished by the applicant. The Madras High Court has adopted an amendment empowering the Court to dispense with security in cases where the next

friend or guardian happens to be the manager of a joint Hindu family. Under the amendment made by the High Court of Kerala, a similar power is given where the next friend or guardian happens to be the parent of the minor. The amendment to rule 6 seeks to incorporate this useful provision.

Sub-clause (*vii*).—The amendment is intended to provide where an application for leave of the Court to a compromise, etc., is made on behalf of a minor, it should be accompanied by the certificate of the pleader as well as an affidavit of the next friend or guardian for the suit, to the effect that the compromise, etc., is for the benefit of the minor.

Sub-clause (*viii*).—Under rule 15, the provisions contained in rules 1 to 14 of the Order extend to, persons adjudged to be of unsound mind and to persons who, though not so adjudged, are found by the Court on inquiry to be incapable of protecting their interests by reason of unsoundness of mind or mental infirmity. Rule 15 is being substituted to provide that rule 2A, which provides for the taking of security from the next friend or guardian should not apply to persons of unsound mind and that the question of insanity supervening during the course of any suit should also be taken into consideration.

Sub-clause (*ix*).—The amendment to rule 16 is intended to bring the rule in line with the substantive provisions contained in sections 83 to 87B of the Code.

Clause 83.—It is felt that the ordinary judicial procedure is not ideally suited to the sensitive area of personal relationships. Litigation concerning or involving affairs of the family, therefore, seems to require a special approach in view of the serious emotional aspects involved. In the circumstances, the objective of family counselling as a method of achieving the ultimate object of preservation of the family should be kept in the forefront. The new Order XXXIIA seeks to highlight the need for adopting a different approach where matters concerning the family are at issue, including the need for efforts to bring about an amicable settlement.

Clause 84—*Sub-clauses* (*i*) *and* (*ii*).—Order XXXIII deals with suits by paupers. Since the expression "pauper" is inappropriate in the present context, the heading of the Order is being changed to "Suits by indigent persons", and the expression "pauper", wherever it occurs in the Order, is being changed to "indigent person".

Sub-clause (*iii*).—The *Explanation* to rule 1 defines "pauper" as a person who is not possessed of sufficient means to enable him to pay the court-fee or, where no court-fee is specified, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit. The *Explanation* is being substituted—

(i) to provide that a person shall be deemed to be an indigent person if he is not possessed of sufficient means (other than property exempt from attachment in execution of a decree and the subject-matter of the suit) to enable him to pay the fees prescribed by law for the plaint in such suit, or where no such fee is prescribed, if he is not entitled to property worth one thousand rupees other than

property exempt from attachment in execution of a decree and the subject-matter of the suit;

(ii) to make it clear that property acquired by the applicant after presentation of the petition and before the decision thereon should also be taken into consideration for deciding the question whether the applicant is an indigent person;

(iii) to clarify that when a plaintiff sues in a representative capacity, the question whether he is an indigent person shall be determined with reference to the means possessed by him in such capacity.

Sub-clause (iv).—New rule 1A provides for the initial inquiry into the means of the applicant by the chief ministerial officer of the Court, but power is being given to the Court either to adopt such report or to make independent inquiries.

Sub-clause (v).—Under clause (c) of rule 5, the application to sue as an indigent person may be rejected on the ground of fraudulent disposition of property or disposition of property in order to be able to apply to sue as an indigent person. The assumption behind this rule is that, if the property had not been disposed of, then the applicant would have had sufficient means to pay the court-fee. The language does not bring out clearly that even where the property disposed of and property still in the possession of the applicant, taken together, is not sufficient for paying court-fee, whether the application can be rejected. The rule is, therefore, being amended to make it clear that where the property disposed of and the property still in possession of the applicant, taken together, is not sufficient for paying the prescribed court-fee, the applicant will be entitled to sue as an indigent person.

Under clause (d) of rule 5, an application may be rejected on the ground of absence of cause of action. The Gujarat High Court has, however, made a distinction between failure to show a cause of action and the bar of limitation or of any other law. New clauses (f) and (g) are being inserted to make it clear that where the allegations show that the suit would be barred by law for the time being in force or that the litigation is being financed by a third person, the application will be rejected.

Sub-clause (vi).—Some of the High Courts have held that examination of the applicant under rule 7 should not be related to the cause of action but should only be related to pauperism. While other High Courts have expressed the opinion that the examination of the applicant under rule 7 may be with reference to the cause of action as well. Rule 7 is, therefore, being amended to make it clear that the petitioner may be examined touching the cause of action and that a full record should be made with regard to such examination.

Sub-clause (vii).—Rule 8 is being amended to exempt the indigent person not only from court-fee but also from process-fee.

Sub-clause (viii).—New rule 9A is being inserted to empower the Court to assign a pleader to an indigent person who is not represented by any pleader. As regards the mode of selection of the pleaders to be so assigned, the High Court is being empowered to frame rules on the subject.

Sub-clause (*ix*).—Rule 11 provides for the procedure where the indigent person fails. Cases occur where a suit is dismissed because a summons upon the defendant has not been served due to the failure of the plaintiff to present copies of the plaint or concise statement. It is intended to cover such cases as well by the proposed amendment.

Sub-clause (*x*).—Rule 15 provides that where an application to sue as pauper is rejected, the applicant can bring a regular suit only after paying the costs incurred by the State Government and of the parties who oppose the application. Rule 15 is being amended to provide that such costs may be paid even after the institution of the suit if the Court allows it; and if the cost is not paid, the plaint shall be rejected.

Sub-clause (*xi*).—Where the Court rejects an application to sue as an indigent person or refuses to allow a person to sue as an indigent person, the question arises whether the Court is bound to give time to the indigent person to pay the court-fee and, on such payment, to treat the plaint as having been filed on the day on which the application was filed. The position is not very clear and different High Courts have taken different views. New rule 15A is being inserted to provide that upon the payment of the court-fee within such time as may be allowed by the Court, the suit shall be deemed to have been instituted on the date on which the application was presented.

Sub-clause (*xii*).—New rule 17 is being inserted to allow the defendant, who is an indigent person, to plead a set-off or counter-claim in that capacity.

Clause 85.—Under Order XXXIV, whether the suit is one for foreclosure, sale or redemption, the preliminary decree in each case must either declare the amount due on the mortgage or direct an account to be taken of what is due to the mortgagee for principal, interest and costs, and for other costs, charges and expenses in respect of the mortgage security. An account is then taken of what is due on the mortgage, the sums so found due to each mortgagee are included in one report and the sale-proceeds are subsequently divided between the plaintiff and the puisne mortgagees in accordance with their claims as found by the report. Where the mortgagee is in possession, an account is taken of what is due to the mortgagee for principal and interest, and also of the income derived by him from the property. After this, a final decree is passed. This procedure is defective because it necessitates two decrees in the same suit, namely, a preliminary decree and a final decree, and also the possibility of there being two appeals against two decrees in the same suit. The scheme of the Order is being changed so as to provide for the passing of one decree, which will correspond to the preliminary decree and all subsequent proceedings which culminate in the final decree should take place in execution. The Order is being amended accordingly.

Sub-clause (*x*).—A proviso is being added to rule 10 to provide that where the mortgagor, before or at the time of the institution of the suit, tenders or deposits the amount due to the mortgagee or such amount as is not substantially deficient in the opinion of the Court, he shall not be ordered to pay the costs of the suit and he snall be entitled to recover his own costs from the mortgagee, unless the Court, for reasons to be recorded, otherwise directs.

Sub-clause (*xi*).—New rule 10A provides for payment of mesne profits by the mortgagee in a suit for foreclosure, where the mortgagor has, before or at the time of the institution of the suit, paid or tendered the sum due on the mortgage or any sum which is not substantially deficient in the opinion of the Court.

Sub-clause (*xiii*).—The question, whether a decree creating a charge can be executed and the property may be sold in execution or whether a separate suit is necessary, has been discussed in many cases. Where a decree directs sale or provides that the money charged shall be recovered from the property, there is no difficulty. But where the decree does not direct sale and recovery of money from the property, and merely creates a charge on the property, the position is not very clear. Though it would depend on the construction of the decree, there has been some uncertainty and conflict in judicial interpretation. New sub-rule (2) is being inserted in rule 15 with a view to clarifying the position.

Clause 86—*Sub-clause* (*i*).—Under Order XXXVI, parties claiming to be interested in the decision of any question of fact or of law may enter into an agreement in writing stating the question in the form of a case for opinion and providing that upon the finding of the Court thereon, certain money shall be paid or property delivered by one of them to the other or that one or more of them shall do or refrain from doing some other specified act.

The procedure provided by Order XXXVI is rarely invoked presumably because of the absence of any apparent benefit to the litigant. In order to highlight the desirability of making a distinction between an ordinary suit instituted by a plaint and a special case originating in an agreement, rule 3 is being amended to expressly provide that the proceeding may be initiated by an application.

Sub-clause (*ii*).—New rule 6 is being added to provide that there should be no appeal from the decree passed as a result of the proceedings under Order XXXVI because a decree passed in such proceedings will be in the nature of a compromise decree.

Clause 87—*Sub-clause* (*i*).—Order XXXVII provides for a summary procedure in respect of certain suits. The essence of the summary suit is that the defendant is not, as in an ordinary suit, entitled as of right to defend the suit. He must apply for leave to defend within ten days from the date of the service of the summons upon him and such leave will be granted only if the affidavit filed by the defendant discloses such facts as will make it incumbent upon the plaintiff to prove consideration or such other facts as the Court may deem sufficient for granting leave to the defendant to appear and defend the suit. If no leave to defend is granted, the plaintiff is entitled to a decree. The object underlying the summary procedure is to prevent unreasonable obstruction by a defendant who has no defence. The Order is, however, confined to suits of negotiable instruments and is confined to the superior Courts. Rule 1 is being substituted to provide for extending the summary procedure to the trial of the specified classes of suits by all Courts.

Sub-clause (*ii*).—Rule 2 is being substituted to provide for the procedure of summary suits.

Sub-clause (*iii*).—Rule 3 is being substituted to provide the procedure for the appearance of the defendant and the consequence of non-appearance of the defendant.

Clause 88—*Sub-clause* (*i*).—Under rule 1, if a person with intent to delude, the plaintiff or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him, absconds or is about to abscond or leaves or about to leave the local limits of the jurisdiction of the Court, he can be arrested before the judgment. The rule is being amended to clarify that the liability to arrest will not arise if the defendant has a lawful excuse for leaving the local limits of the jurisdiction of the Court.

Sub-clause (*ii*).—There is a divergence of opinion between the High Court as to whether an attachment made before judgment without complying with the procedure specified in rule 5 is a nullity or is voidable. Rule 5 is intended for the protection of the person whose property is sought to be attached before judgment. If he does not receive the notice required by law, and is thus denied the opportunity of preventing the attachment by the offer of security, an injustice would accrue to him. Rule 5 is, therefore, being amended to clarify that, where the attachment is made without complying with the procedure laid down in rule 5, such attachment shall be void.

Sub-clause (*iii*).—The amendment of rule 8 is of a verbal nature. In place of the word "investigation", the word "adjudication" is being substituted.

Sub-clause (*iv*).—Sub-rule (1) of new rule 11A is intended to clarify the position as to whether the provisions of Order XXI, rule 57, apply to attachment made before judgment. The provision has been framed in general terms as it would not be appropriate to apply only the provisions of rule 57 of Order XXI.

Sub-rule (2) of new rule 11A clarifies that an attachment before judgment made in a suit which was dismissed for default will not become revived on the restoration of the suit.

Clause 89—*Sub-clause* (*i*).—Rule 1 of Order XXXIX is primarily concerned with the preservation of the property in dispute till the legal rights are ascertained. On a literal reading of the rule, the situation where the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit is not covered by the rule. The rule is being amended accordingly.

Sub-clause (*ii*).—The omission of sub-rules (3) and (4) of rule 2 are consequential to the insertion of new rule 2A.

Sub-clause (*iii*).—New rule 2A is being inserted to provide for the consequences of a breach of an injunction issued under rule 1 which is, at present, not covered. The amendment is intended to seek the application of the provisions for breach, which are, at present, available under an injunction granted under rule 2, to the said class of cases as well. There is a controversy as to whether under the existing provision, a

Court to which a suit is transferred can punish disobedience of an injunction issued by the predecessor Court. New rule 2A provides that the transferee Court can also exercise this power.

Sub-clause (*iv*).—A proviso is being added to rule 3 to provide that, before granting any *ex parte* injunction, the Court should obtain an affidavit from the applicant to the effect that a copy of the application and other documents relied upon by the applicant have either been delivered to the opposite party or have been sent to him by registered post.

Sub-clause (*v*).—*Ex parte* temporary injunctions are one of the causes of delay in litigations because the party which obtains the injunction does not show any inclination to expedite the disposal of the suit. New rule 3A is being inserted to ensure that while the power to issue *ex parte* injunction is not curtailed, because the exercise of such power, in urgent cases, is needed, there is a time-limit with regard to the duration of such *ex parte* injunctions.

Sub-clause (*vi*).—Rule 4 is being amended to provide for the vacation of an *ex parte* injunction on the ground that a false or misleading statement had been made in the application for injunction. A further proviso is being added to the effect that, where an injunction has been granted after giving to a party an opportunity of being heard, the order for injunction shall not be discharged, varied or set aside on the application of that party except where such discharge, variation or cancellation is necessitated by the change in the circumstances or by reason of the hardship caused by it.

Sub-clause (*vii*).—Sub-rules (1) and (2) of rule 8 require notices to be given to the defendant or, as the case may be, the plaintiff before an application is made under those sub-rules. The rule is being amended to provide that the Court shall direct notice of the application to be given to the opposite parties in all cases except in a case where it appears to the Court that the object of making the order would be defeated by the delay caused thereby.

Clause 90.—*Sub-clause* (*i*).—When two or more suits or appeals are disposed of by a common judgment, the requirement of Order XLI that the memorandum of appeal should be accompanied by a copy of the judgment occasions extra expense. It is intended to meet with this difficulty by providing that where more cases than one are disposed of by a common judgment, the Appellate Court may dispense with the necessity of filing more than one copy of the judgment.

Rule 1 is being amended to provide for the deposit or the furnishing of security for decretal amount by judgment debtor when the appeal is against an order made in execution of a money decree.

Sub-clause (*ii*).—New sub-rule (1A) is being inserted in rule 3 to provide that where the appellant fails to make the deposit of the decretal amount or to furnish security specified in sub-rule (3) of rule 1, the memorandum of appeal shall be rejected.

Sub-clause (*iii*).—Where an appeal is filed after the expiry of the period of limitation, it is the practice to admit the appeal subject to the provisions as to limitation being raised at the time of the hearing. This practice has been disapproved by the Privy Council which has stressed

the expediency of adopting a procedure for securing the final determination of the question as to limitation even at the stage of admission of the appeal. New rule 3A is being inserted to give effect to the said recommendation.

Sub-clause (iv).—An *Explanation* is being added to rule 5 to provide that an order for stay of execution made by the Appellate Court shall be effective from the date of communication of such order to the Court of first instance, but it will be obligatory for the Court of first instance to act on an affidavit by a pleader having personal knowledge of the matter if the affidavit states that such an order for stay has been made.

Sub-rule (4) causes trouble in practice because once an *ex parte* order of stay of execution is obtained, the appellant is not interested in the prompt disposal of the appeal. Further, it is common experience that often the very object of an appeal is to obtain an order of stay, particularly in respect of money-decrees; and even where the appellant knows that he has no case, he prefers an appeal with the above object. Hence the sub-rule (4) is being made subject to sub-rule (3).

Sub-clause (v).—Sub-rule (4) is being inserted in rule 11 to provide that in case of appeals against orders in execution of money-decrees, the appellant judgment-debtor will be required to give security for, the decretal amount as a condition precedent to the admission of the appeal. It is further provided that, while the entertaining of the appeal may not be postponed until the security is furnished, the appeal may be admitted conditionally so that if the security is not furnished within the time fixed by the Appellate Court, the memorandum of appeal may be rejected.

New sub-rule (5) is being added to rule 11 to provide that, even where the Appellate Court (not being a High Court) dismisses an appeal, it shall deliver a formal judgment and a decree shall be drawn up accordingly.

Sub-clause (vi).—There is no conflict on the question whether an appeal may be admitted on some grounds only. But there is a divergence of opinion between the High Courts with regard to the question whether an appeal may be admitted in part only. New rule 12A is being inserted to clarify that an appeal may be admitted in part only and where an appeal is admitted in part, the appellant will not be allowed to argue with regard to any other part except with the leave of the Court.

Sub-clause (vii).—With a view to avoiding the delay in the disposal of appeal, it is felt that the service of the memorandum of appeal on those parties who had not appeared in the Court of first instance and who had not filed any address for service may be dispensed with. Sub-rules (3), (4) and (5) are being inserted in rule 14 to achieve this object.

Sub-clause (viii).—When an Appellate Court does not dismiss an appeal summarily, it should fix a date for the hearing of the appeal. The procedure therefor is provided in rule 17 which provides that where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed. In this rule, the word "may" shows that apart from dismissal of the appeal for default, the Court can pass other orders. One such order could be

adjournment of the appeal. There is, however, a conflict of decisions on the question whether, if the appellant does not appear, the Appellate Court can dispose of the appeal on the merits. The Allahabad High Court has held that a decision on the merits is permissible. But the other High Courts have taken a different view. Having regard to the conflict of decisions, rule 17 is being made more explicit by adding an *Explanation* thereto to the effect that dismissal of an appeal on the merits would not be permissible.

Sub-clause (*ix*).—In order to expedite the disposal of appeals, rule 18 is being amended to provide that if on the day of the hearing of the appeal it is found that the notice to the respondent has not been served and the appellant fails to deposit the expenses of serving the notice once again, the appeal may be dismissed.

Sub-clause (*x*).—There is a controversy as to whether a respondent can be added in an appeal after the expiry of the period of limitation for appeal. Rule 20 is being amended with a view to clarifying that a respondent cannot be added after the expiry of the period of limitation. But the Court will have powers to grant requests for impleading a party after the expiry of the period of limitation.

Sub-clause (*xi*).—Rule 22 gives two distinct rights to the respondent in the appeal. The first is the right of upholding the decree of the Court of the first instance on any of the grounds on which that Court decided against him; and the second right is that of taking any cross-objection to the decree which the respondent might have taken by way of appeal. In the first case, the respondent supports the decree and in the second case he attacks the decree. The language of the rule, however, requires some modification because a person cannot support a decree on a ground decided against him. What is meant is that he may support the decree by asserting that the matters decided against him should have been decided in his favour. The rule is being amended to make it clear.

An *Explanation* is also being added to rule 22 empowering the respondent to file cross-objection in respect to a finding adverse to him notwithstanding that the ultimate decision is wholly or partly in his favour.

Sub-clause (*xii*).—New rule 23A is intended to widen the powers of the Appellate Court to remand a case in the interests of justice.

Sub-clause (*xiii*).—Rule 25 provides that where a Court from whose decree an appeal is preferred has omitted to frame or try any issue or to try any question, the Appellate Court may, if it considers necessary, frame the issues and refer the same for trial to the lower Court. Rule 15 is being amended to provide that the Appellate Court, while remanding the case, may provide for a time-limit for returning the evidence and findings.

Sub-clause (*xiv*).—New rule 26A requires the Appellate Court, while remanding a case under rule 23 or rule 23A or rule 25, to fix a date for the appearance of the parties before the lower Court so as to avoid delay that may be caused by the issue of further notices.

Sub-clause (*xv*).—Rule 27 is being amended to provide that additional evidence may be received by the Appellate Court if the appellant satisfies the Court that, after the exercise of due diligence, such

evidence was not within his knowledge or could not be produced when the appeal was decided against him.

Sub-clause (*xvi*).—A new sub-rule (2) is being inserted in rule 30 with a view to permitting an Appellate Court, in cases where a written judgment is to be pronounced, to read out the points for determination, the decision thereon and the final order passed in the appeal instead of the whole judgment. The object underlying the amendment is to save the time of the Appellate Court while at the same time ensuring that the parties are informed of the substance of the judgment.

Sub-clause (*xvii*).—Under rule 33, the Appellate Court has power to pass a decree and make an order which ought to have been passed or made and to pass or make such further or other decree or order and this power may be exercised by the Court notwithstanding that the appeal is only to a part of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection. The rule is being amended to cover cross-suits and also a suit in which two decrees are passed. This is desirable in order to remove the uncertainty with regard to *res judicata*.

Clause 91.—Under rule 1 of Order XLII, the provisions of Order XLI with regard to appeals from original decrees apply to appeals from appellate decrees, that is to say, second appeals. New rule 2 is being inserted in Order XLII to provide that where a second appeal is admitted, the Court shall record reasons for the admission of the appeal; but, where the appeal is not admitted, no reasons need be recorded.

New rule 3 provides that it shall not be necessary to serve notice of any proceeding incidental to an appeal on any respondent other than a person impleaded for the first time in the second Appellate Court unless the respondent has appeared and filed an address for the service in the Court of second appeal or has appeared in the second appeal.

Clause 92.—Orders which are final in themselves, that is to say, which are not preceded or accompanied by any decree are not appealable unless they are enumerated in section 104 or in rule 1 of Order XLIII. But, under section 105, any error, defect or irregularity in such order may, if it affects the decision in the case, be challenged in an appeal against the decree passed in the suit. Order XLIII is, therefore, being amended to provide that certain orders, which are not appealable, may be challenged in an appeal against the decree on the ground that such order should not have been made. The principal object of such an approach is to avoid successive appeals which add to the length of the litigation.

Sub-clause (*i*)—*Rule* 1.—Clause (a) provides for appeal against an order under Order VII, rule 10, where the plaint is returned to be presented to the proper Court. The clause is being amended to provide that no appeal shall lie where the procedure specified in rule 10A of Order VII is followed.

Clause (b) provides for an appeal against an order under Order VIII, rule 10, where the defendant fails to file a written statement within the time fixed by the Court and the Court pronounces judgment against him

This clause is being omitted with a view to reducing two appeals because the defendant can, in an appeal from the decree passed as a result of the order, take the same point as he can take in an appeal under clause (b).

Clause (e) provides for an appeal against an order under rule 4 of Order X, where the Court postpones the hearing of a suit because the pleader refuses or is unable to answer any material question relating to the suit and directs the party to be present on such day. Since the ground can be taken in an appeal preferred against the decree, the clause is being omitted.

Clause (g) provides for an appeal against an order under rule 10 of Order XVI for the attachment of property. This clause is being omitted in view of the provisions of rule 11 of Order XVI under which the person concerned may apply to the Court for vacating the order for attachment.

Clause (h) provides for an appeal against an order under rule 20 of Order XVI if any party to a suit refuses to give evidence when called upon by the Court to do so. The clause is being omitted because a defendant can, in an appeal from the decree passed as a result of the order, take the same point as he can take in an appeal under clause (h).

Clause (m) provides for an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction. The clause is being omitted because in an appeal against the decree the aggrieved party can take the point that the compromise ought not to have been recorded or ought to have been recorded, as the case may be.

Clause (o) provides for an appeal against an order under Order XXXIV refusing to extend the time for payment of the mortgage money. In view of the changes made in Order XXXIV, this clause is being omitted.

Under clause (v), an order under rule 6 of Order XLV made by any Court other than a High Court, refusing the grant of a certificate to appeal to the Supreme Court, is appealable. The appeal contemplated by that clause is obsolete and the clause is, therefore, being omitted.

New clause (ja) is being inserted to confer a right of appeal against orders passed *ex parte* under Order XXI.

New clause (na) is being inserted to provide for an appeal against an order rejecting an application for permission to sue as an indigent person.

Sub-clause (*ii*).—New rule 1A is being inserted to provide that certain orders which are not appealable may be challenged in an appeal against the decree.

Clause 93—*Sub-clauses* (*i*) *and* (*ii*).—Order XLIV deals with appeals by indigent persons. In view of the change in the heading of Order XXXIII, the heading of this Order is being changed to "APPEAL BY INDIGENT PERSONS"; and the expression "paupers", occurring in the Order, is being changed to "indigent persons".

Under sub-rule (2) of rule 1, an application by an indigent person for leave to appeal as such must be rejected unless the Court has reason

to think that the decree is contrary to law or to some usage having the force of law or is otherwise erroneous or unjust. These restrictions on the right of an indigent person to prefer an appeal cannot be regarded as justifiable or reasonable. Besides, such restrictions may be regarded as discriminatory. In the circumstances, sub-rule (2) of rule 1 is being omitted.

Sub-clause (*iii*).—Rule 2 contemplates an inquiry into the question whether or not the appellant is an indigent person. In the interests of expedition, it is being provided that, where the appellant was allowed to sue as an indigent person, no further inquiry shall be made if the applicant has made an affidavit to the effect that he has not ceased to be an indigent person since the date of the decree appealed from; but, if the Government Pleader or the respondent disputes the truth of such statement in the affidavit, an inquiry into the question whether or not he is an indigent person shall be held. Where, however, it is alleged that the appellant became an indigent person after the date of the decree appealed from, the inquiry into the means of the appellant should be made by the Appellate Court or by an officer of that Court unless the Appellate Court considers that the inquiry should be made by the Court from whose decree the appeal has been preferred. Accordingly, for the existing rule 2, new rules 2 and 3 are being inserted.

Clause 94—Under article 133 of the Constitution, an appeal lies to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court, if the High Court certifies that the case involves a substantial question of law of general importance and that the said question needs to be decided by the Supreme Court. Experience shows that applications for leave to appeal to the Supreme Court are not disposed of expeditiously and this causes delay in the conclusion of the litigation. Rule 2 of Order XLV is, therefore, being amended to provide that every petition for leave to appeal to the Supreme Court should be disposed of as expeditiously as possible and endeavour shall be made to conclude the disposal of the petition within sixty days from the date of its presentation to the Court.

Clause 95—*Sub-clause* (*i*).—Order XLVII provides for the review of judgments. But the scope of such review is very limited. Review of judgments may be allowed on three grounds, namely:—

(i) discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the decree was passed or order was made, or

(ii) some mistake or error apparent on the face of the record, or

(iii) for any other sufficient reason (which has been interpreted to be analogous to the other reasons specified above).

According to some High Courts, the fact that the view of the law taken in a judgment has been altered by the subsequent decision of a superior Court in another case is not an error apparent on the face of the record and, as such, is not a ground for the review of the judgment. According to the Kerala High Court, however, it is an error apparent on the face of the record and, as such, a ground for the review of the

judgment. In the circumstances, an *Explanation* is being added to rule 1 to clarify that the view taken on a question of law in a subsequent decision of a superior Court in any other case shall not be a ground for the review of the judgment.

Sub-clause (*ii*).—Under clause (w) of rule 1 of Order XLIII, an appeal lies from an order under rule 4 of Order XLVII granting an application for review but the scope of such appeal is limited to the grounds specified in clauses (b) and (c) of sub-rule (1) of rule 7. In the circumstances, no appeal would lie where a review is granted on the ground of a mistake or error apparent on the face of the record or for any other sufficient reason. There does not appear to be any valid reason why an appeal should lie when a review is granted on certain grounds and an appeal should not lie where it is granted on any other ground. In the circumstances, sub-rule (1) of rule 7 is being amended to give a right of appeal in all cases where an order for the review of judgment is made on any ground.

Clause 96.—In Appendix A, under the heading "(3) Plaints",—

(a) Form No. 37 is being amended in view of the amendment which is being made in section 91;

(b) Form Nos. 45 and 46 are being amended in view of the omission of the requirement regarding the passing of preliminary and final decrees in mortgage suits.

Clause 97.—In Appendix B, Form Nos. 2 and 4 are being amended, and new Form No. 4A is being inserted, in view of the amendments which are being made in Order XXXVII. It is being specified in Form No. 2 that the summons by which the plaint is served on the defendant would itself require the defendant to file a written statement within the time specified in the summons.

Clause 98.—The Forms of decrees in Appendix D are being amended in view of the omission of the requirement to pass preliminary and final decrees in mortgage suits and other suits.

Clause 99.—In Appendix E,—

(a) Form No. 7 is being amended in view of the amendment which is being made in rule 16 of Order XXI;

(b) in view of the amendment of the Indian Coinage Act, 1906, the expression "annas" has been omitted from Form No. 14;

(c) new Form No. 16A is being inserted in view of the amendment which is being made in rule 41 of Order XXI;

(d) Form No. 24 is being amended in view of the amendment which is being made in rule 54 of Order XXI;

(e) Form No. 29 is being amended in view of the provisions of the second proviso which is being added to rule 66 of Order XXI.

Clause 100.—In Appendix H,—

(a) new Form No. 2A is being inserted in view of the substitution of rule 1 of Order XVI;

(b) Form No. 11 is being substituted and new Form No. 11A is being inserted in view of the amendments which are being made in Order XXXII.

Clause 101.—By this clause, all amendments to the Code made by the State Legislatures and the High Courts before the commencement of the Code of Civil Procedure (Amendment) Act, 1974, are, except to the extent they are consistent with the provisions of this Act, being repealed. The provisions relating to savings are broadly intended to ensure that the amendments made by the sections mentioned in sub-section (2) are not taken advantage of in respect of proceedings which are pending at the commencement of the Code of Civil Procedure (Amendment) Act, 1974.

Clause 102 (Amendment of the Schedule to the Limitation Act, 1963).—An application to set aside a sale in execution of a decree on deposit under rule 89 of Order XXI is required to be made within thirty days from the date of the sale. Experience shows that this period is too short and often causes hardship because the judgment-debtors usually fail to arrange for moneys within that time. Banks usually take more than thirty days to sanction loans and advances. In the circumstances, entry 127 of the Schedule to the Limitation Act is being amended to increase the period of limitation to sixty days in respect of an application to set aside a sale in execution of a decree. This increase in the period of limitation will not affect the purchaser because five per cent. of the purchase-money is required to be paid to him. The advantage of the increased period of limitation will also be available to an application under rule 90 or rule 91 of Order XXI to set aside a sale in execution of a decree. In view of the increase in the period of limitation, confirmation of a sale will have to await the expiry of the increased period of limitation.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-section (5) of section 86, as sought to be inserted by clause 30 of the Bill, empowers the Central Government to provide, by general or special order, exemption from arrest, under the Code, of any member of the staff of a foreign State or the staff or retenue of a Ruler, Ambassador or Envoy of a foreign State or the High Commissioner of a Commonwealth country.

Rule 26 of Order V, as sought to be substituted by clause 58 of the Bill. empowers the Central Government to declare in respect of any Court situated in a foreign territory that service by such Court of any summons issued under the Code by a Court in India shall be deemed to be valid service.

Sub-rule (2) of rule 3 of Order XVIA, as sought to be inserted by clause 70 of the Bill, provides for rules to be made with regard to the scale of expenses to be defrayed by a party requiring the attendance of any prisoner in a Court, subordinate to the High Court, to give evidence.

Sub-rule (2) of rule 1 of Order XXA, as sought to be inserted by clause 74 of the Bill, empowers the High Courts to make rules with regard to the award of costs under the said Order.

Rule 9A of Order XXXIII, as sought to be inserted by clause 84 of the Bill, empowers the High Courts to make rules providing for the mode of selecting pleaders to be assigned to persons, permitted to sue as indigent persons, who are not represented by any pleader. The said rule further empowers the High Courts to provide, by rules, the facilities which are to be provided to the pleaders assigned to such indigent persons.

Rule 1 of Order XXXVII, as sought to be substituted by clause 87 of the Bill, empowers the High Courts to restrict the operation of the Order to certain categories of suits and to enlarge or vary the categories of suits which may be brought under the operation of Order XXXVII.

Sub-rule (2) of rule 2 of Order XXXVII, as sought to be substituted by clause 87 of the Bill, provides that the summons of the suit shall be in Form No. 4 in Appendix B or in such other form as may be prescribed from time to time.

Sub-rule (4) of rule 3 of Order XXXVII, as sought to be substituted by clause 87 of the Bill, provides that the summons on the defendant for judgment shall be in Form No. 4A in Appendix B or in such other form as may be prescribed from time to time.

The matters, in respect of which such orders or rules may be made, are matters of detail and may hardly be provided for in the Bill. The delegation of legislative power is, therefore, of a normal character.

S. L. SHAKDHER,
Secretary-General.

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